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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE 45th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 March 1990, at 10 a.m.

Chairman: Mrs. QUISUMBING (Philippines)

later: Mr. DITCHEV (Bulgaria)

CONTENTS

Advisory services in the field of human rights (continued)

Human Rights and scientific and technological developments

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The meeting was called to order at 10.35 a.m.

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 22) (*continued*)
(E/CN.4/1990/42, 43, 44 and Add.1, 45 and Add.1; E/CN.4/1990/NGO/19 and 20)

1. Mr. RIVAS POSADA (Colombia) said that his delegation noted with satisfaction the progress made, despite budget restraints, in developing and applying the programme for advisory services in the fields of human rights. It had read with appreciation the reports by the Experts on Equatorial Guinea (E/CN.4/1990/42), Haiti (E/CN.4/1990/44 and Add.1) and Guatemala (E/CN.4/1990/45 and Add.1), and welcomed the possibility that the Commission might consider, at its next session, the question of similar assistance to Paraguay as proposed in a draft resolution recommended by the Sub-Commission to the Commission for its adoption (E/CN.4/1990/2-E/CN.4/Sub.2/1989/58, chapter I, section A, draft resolution V).
2. Such services were not only praiseworthy in themselves but were also an indispensable complement to the Commission's tasks of monitoring the observance of human rights everywhere and encouraging the development of national human rights institutions. The criticism, some of it hardly impartial, often voiced in the Commission about advisory services failed to take into account the enormous difficulties many countries faced in their efforts to promote and protect human rights - although a number of delegations had rightly stressed the need for Governments to co-operate fully with the Commission and the world community in carrying out policies aimed at improving their social sectors.
3. Colombia had been successfully carrying out an experiment in advisory services, under the auspices of its Office of the Human Rights Adviser and involving direct UNDP funding, to promote the awareness and observance of all citizens' rights. The programmes included training courses for police, military and administrative personnel, fellowships and seminars, as well as programmes and materials for education from the primary to the tertiary level. In addition, a number of Governments had collaborated in specific sectors; for example, the Governments of Canada and the Netherlands had provided assistance in programmes targeted at regional and municipal officials, and the Italian Government had provided a training course for judges.
4. The experience of Colombia and of other countries confirmed the importance of the advisory services programme, which he hoped, could make further contributions to countries in need of such services. He also hoped that the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights would continue to grow.
5. Mrs. GONZALEZ MARTINEZ (Mexico) said that the programme of advisory services had been shown to be one of the most effective means of supporting national efforts for the promotion and observance of human rights. The experience gained in various regions and nations was bound to enhance the programme's implementation and make it more flexible.
6. Nevertheless, her delegation remained gravely concerned about the situation in Haiti, as reflected in the Expert's report (E/CN.4/1990/44 and Add.1); it urged the Haitian Government to take all requisite measures to improve the situation of its citizens. The world community must intensify its

co-operation for development in Haiti, since the country's underdevelopment was clearly one factor of the current insecurity there. In that connection, it disturbed her delegation that the recommendations contained in the report submitted to the Commission at its previous session had failed to mention the problem of underdevelopment; it was hard to contemplate advisory services for a Government and its officials without, at the same time, envisaging programmes for public education and training.

7. The current report contained a recommendation that, if the Commission were to consider extending the Expert's mandate, it would have to establish a scheme to provide technical assistance in connection with the electoral process by sending observers before and during the elections (para. 107 (e)); tasks such as that were matters for the Government to decide and not properly a feature of an advisory services programme. The point made in the following subparagraph, that the other recommendations submitted in the 1989 report (E/CN.4/1989/40, para. 139), should be considered only if the Haitian Government was prepared to make specific requests, should apply also to the question of sending observers.

8. Paragraph 93 of the report, relating to talks with representatives of the diplomatic world, suggested that the Expert had overlooked the presence in the Haitian capital of the ambassadors of countries in the region to which Haiti belonged.

9. In general, the report would have been better had it contained some reference, in its conclusions (para. 106), to the dire situation of the Haitian people's economic, social and cultural rights, regarding which a far-reaching programme of assistance, in co-operation with the specialized agencies, pursuant to the relevant General Assembly resolutions, would be extremely valuable.

10. The programme of assistance to Guatemala (E/CN.4/1990/45 and Add.1) was one of the most comprehensive that the United Nations had ever implemented. The Government of Guatemala had made great efforts in the legal and institutional fields to improve the human rights situation and consolidate democracy. However, the serious instances of violence referred to in the report (para. 57), together with the failure to investigate and punish many killings and disappearances, pointed to a situation which was severely hampering the progress of human rights. As the Expert has pointed out, the continued violations of civil and political rights stemmed from factors that were often beyond the Government's control. It was essential for the Government to investigate thoroughly the murders of Hector Oqueli and Dr. Gilda Flores.

11. Her delegation endorsed the recommendations contained in the report (para. 71) and the continuation of a broad programme of assistance; it agreed that the institutional framework was a necessary prerequisite for the future improvement of the situation which was undeniably linked to the maintenance of democracy. It appealed to the Government of Guatemala, a neighbouring and sister country, to adopt the necessary measures to put an end to the serious human rights problems, making wider use of the programme of advisory services.

12. Mr. PEREIRA GOMES (Portugal) said that his delegation appreciated the programme for advisory services and noted with satisfaction the increase in related activities reported in the Secretary-General's report (E/CN.4/1990/43) and in the Experts' reports. While his delegation agreed that such services

should form part of the overall human rights programme, it shared the view expressed in the Secretary-General's report (para. 17) that the provision of such assistance should not be a pretext for a Government to evade its responsibility and should not exempt it from scrutiny by the Commission. Advisory services should be provided at the request of a Government which was displaying real political will to improve or advance human rights.

13. His delegation welcomed the efforts made by the Centre for Human Rights, including the setting up of an advisory group and the establishment of a flexible inter-agency mechanism for human rights activities (para. 31). There had been a welcome increase in contributions to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, but the Voluntary Fund could not replace regular budget allocations, which needed to be larger.

14. His Government welcomed the growing number of requests, from all regions, for advisory services. It planned to hold a training course at Lisbon for officials from Portuguese-speaking countries; the course would be organized by the Centre for Human Rights, with the collaboration of the International Centre for the Teaching of Human Rights and Peace. That initiative was a follow-up to the course held at Lisbon in May 1988. Experience had shown that priority should be given, when allocating resources, to projects and programmes which had a multiplier effect; in that regard, training courses and expert assistance were more productive than fellowships or large-scale seminars.

15. Mr. DLAMINI (Swaziland) said that, once the concept of human rights was accepted, no State could consider itself wholly immune from criticism or praise. The principle of non-interference in the internal affairs of other States was recognized in international law, but unless that principle could be modified, the purpose of common membership, objectives and ideals would be frustrated; it surely could not have been the Commission's original intention that its members should meet annually but say nothing about the human rights situations in other Member States. The barbarous acts, referred to in the preamble to the Universal Declaration, which had outraged the conscience of mankind had initially been defended as internal affairs.

16. Although the Commission existed by the will of the Member States' Governments, its purpose was to serve not their immediate interests but those of peoples themselves. Any Government, no matter how democratic its election had been, would sooner or later pursue purely oligarchic interests, often at variance with the interests of its people. Therefore, the effective enjoyment and safeguarding of human rights should not be taken for granted in any country.

17. The Commission's members should not fail to speak out about violations of human rights wherever they might occur; to accuse another State of infringing human rights did not necessarily mean that the accuser was always innocent of similar infringements. The responses of Governments to the Commission regarding alleged failure to observe human rights had at times left something to be desired; his delegation nevertheless thanked them for co-operating with the Commission and for their efforts. Many Governments had remained in office precisely by denying human rights to their people.

18. His delegation commended the Commission on its work in providing advisory services and also commended the recipients of those services in the firm belief that they would be put to beneficial use. There were many obstacles to be overcome, however, since the greater part of mankind still lived in conditions which prevented the exercise of human rights.
19. It was undoubtedly true that more violations of human rights occurred under certain forms of government than others. At the centre of human rights there was the element of free choice - including the choice, at periodic intervals of both the system of government and the actual governors. However, his delegation did not deny that there could be some limit on choice.
20. His Government was observing with great admiration the changes taking place in Eastern Europe and southern Africa and hoped that they were in the right direction and consistent with the advancement of freedom and the enjoyment of human rights. Those historic changes would prove that a Government which took the lead in a humane and popular path in the interest of the people would not regret its efforts; nor should popular changes brought about by a régime formerly accused of human rights violations necessarily lead to the immediate demise of that régime.
21. To expect Governments to spearhead the promotion of human rights in their countries was to ask a great deal from them. Human rights were best protected at the instance of the people themselves who were the beneficial possessors of those rights. In the normal course of events, one should not be discouraged if a people, the recipients of advisory services in the human rights field, viewed with disbelief and scepticism a Government with a history of shameless violations of human rights, which suddenly requested advisory services from the Commission and co-operated in the administration of those services. In such circumstances, his delegation strongly urged the continued use of special rapporteurs, possibly in conjunction with advisory services.
22. With regard to human rights, Swaziland, as a developing country, had had its fair share of difficulties, which it had not so far been able to overcome. However, the search was continuing. In 1973, the independence Constitution then perceived as "unworkable" had been abolished. Attempts to find a suitable replacement had led to the current tinkhundla-based parliamentary system of government introduced in 1978. Technically, however, Swaziland did not have a formal constitution.
23. The tinkhundla-based system of government provided for free political expression. As an African kingdom steeped in long-established traditions and social mores, Swaziland was concerned about the need to evolve a system of government and political order responsive to the needs of its people. It had emerged from colonial rule deeply ethnocentric and suspicious of so-called modern and progressive changes in the political order. That largely explained its reluctance to adhere to many of the human rights conventions and instruments. A substantial amount of appropriate education in the relevant areas of human rights was still desirable to raise the national consciousness, so as to avoid the appearance of a minority of progressive leaders imposing the requisite human rights standards.
24. Yet Swazi traditionalism was adaptive and pragmatic. In introducing the tinkhundla system of government, King Sobhuza II had acknowledged the need to change and abandon institutions which did not promote the welfare of the

people. To that end, he had clearly stated that the current system of government in Swaziland was only an "experiment". If it worked well, it would be confirmed; if it did not, it would have to be reviewed. His Government was ever prepared to meet reasonable demands for greater liberalization and democracy.

25. The Government was willing to take the lead in fostering human rights in accordance with internationally accepted standards, pending the establishment of autonomous human rights bodies. It was therefore eager to receive appropriate advisory services in the field of human rights. An early start in that regard should ease any future tension by all concerned and progressively create a healthy climate for greater appreciation and enjoyment of human rights.

26. Mr. VIGNY (Observer for Switzerland) said that, in 1989, his Government had made a contribution of FS 55,000 to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights. In its opinion, the advisory services programme was useful since it often made, at the multilateral level, a positive contribution to States which, confronted with human rights problems, had identified and wished to resolve them but did not have the necessary financial or technical means to do so.

27. It must be made clear that such technical assistance provided to States requesting it could have a positive impact on the human rights situation only if the relevant projects dealt with problems in a concrete and direct way. Advisory services should not be a mere public relations operation designed to enable Governments to improve their image by, for example, organizing costly academic seminars on human rights attended by representatives of the national and international intellectual elite. Advisory services should have the primary goal of increasing the awareness of persons confronted in their daily work with specific problems relating to the protection of human rights.

28. When making its contribution, therefore, his Government had urged that it should be used for planning and information courses for national staff responsible for the preparation, implementation and monitoring of legislation. In particular, he was referring to legislative draughtsmen, officers of the police and armed forces, prison guards and judges. All such persons should be informed and trained so that respect for international standards in the field of human rights and humanitarian law would become the normal attitude in their day-to-day work, including situations of tension and crisis. It was only through the adoption of such measures that the commitments accepted by States in becoming parties to international human rights instruments could be genuinely fulfilled.

29. It was no secret that the implementation of the advisory services programme raised numerous questions, such as those of determining the specific objectives to be achieved, setting an order of priorities to be followed in the choice of projects to be supported, determining the conditions to be met by a State in order to benefit from the advisory services, and developing criteria for the evaluation, execution and follow-up of projects. It was for the Commission, taking into account the comments of donor countries and also those of the Centre for Human Rights, with the advice of a group of experts composed of independent representatives, to elaborate guidelines on all those points. Such an effort should be made in close co-operation with development

agencies, such as UNDP, specialized agencies such as UNESCO, other IGOs such as the Council of Europe, and non-governmental organizations and experts in certain fields of human rights.

30. With regard to the activities financed by the Fund and those covered by the regular budget of the United Nations, his delegation considered that expenditure incurred by the Centre as a result of a mandate given by the Commission or another United Nations organ should be covered entirely from the regular budget and not divided between the regular budget and the Fund, which should be used to finance projects going beyond the mandates specified by the Commission.
31. The advisory services programme could be successful only if the applicant States were genuinely prepared to collaborate and improve respect for human rights in their territories. The services should never become a means of evading the institutional machinery of the Commission, such as a special rapporteur. The provision of advisory services could constitute a supplement to but should never be a substitute for the Commission's own efforts. The two approaches had the same objective, namely to increase respect for human rights in the country concerned.
32. Mr. PALLARES BUONAFINA (Observer for Guatemala) said that, as noted in the Expert's report (E/CN.4/1990/45 and Add.1), his Government had made appropriate use of the advisory services provided to it since 1987.
33. In recent years, the Commission had requested the Secretary-General to provide advisory services to the new Governments of countries which had experienced periods of frequent human rights violations in order to help them take the necessary measures with a view to restoring the full enjoyment of human rights and fundamental freedoms. Guatemala, which for many years had been governed by authoritarian régimes, was in that category. The assistance provided by the United Nations had greatly helped his Government to develop a human rights policy that made it possible to strengthen and consolidate the democratic process within a framework of absolute freedom, tolerance and respect for the dignity of the human person.
34. His Government was determined to build in Guatemala a more just and participatory society fully aware of its rights and obligations with confidence in its moral and spiritual strength. National reconciliation, payment of the social debt to the most disadvantaged sectors, opportunities for youth, and the fight against poverty were the priority objectives of his Government, which was determined to achieve true social justice.
35. His Government recognized the praiseworthy work done by the Expert on Guatemala and expressed its satisfaction with the objective and comprehensive reports that he had submitted to the Commission during the past three years. It had implemented the measures which he had recommended and had paid due regard to his observations and suggestions.
36. The Congress of Guatemala had recently elected a new Procurator for Human Rights, who had expressed his determination to strengthen his office institutionally, expand its functions and carry out fully the difficult mission entrusted to him by the highest representative body of the people of Guatemala. For its part, the Government fully supported the Procurator in the performance of his duties.

37. The advisory services of the United Nations could provide invaluable support to the Procurator for Human Rights as a domestic institution set up to investigate all the complaints made, to propose measures to improve the human rights situation, and to collaborate with the Judiciary for the trial and punishment of those responsible for any human rights violations.

38. Some non-governmental organizations with sectarian political aims had expressed in the Commission their opposition to the continued provision to Guatemala of advisory services in the field of human rights, deliberately distorting the facts with regard to his country. They had described a situation that had existed in the past and were unwilling to recognize the existence in Guatemala of a legitimate Government, the product of genuine, free and fair elections, which had amply demonstrated its respect for human rights and its determination to co-operate openly and fully with the relevant bodies established. He categorically rejected the false accusations levelled against his Government and asked the Commission to examine with impartiality the actual situation in his country.

39. The appointment of an expert in the human rights field with respect to Guatemala had produced positive results, since it had helped his Government to improve the enjoyment of human rights and had enabled the Commission to monitor the Government's actions through the Expert's reports. Consequently, the international community had recognized that there was no systematic policy of human rights violations in Guatemala, as was clear from the reports of the Expert and those of the Special Rapporteur to examine questions relevant to torture, both of whom had visited his country and personally checked on the human rights situation there. There was thus no justification whatever for the proposal by some non-governmental organizations that the situation in Guatemala should be dealt with under agenda item 12 (b).

40. The preservation of democracy in Guatemala was a necessity since it was only under such a system that it was possible to promote development, secure domestic peace, reduce acts of violence, combat extreme poverty and make resolute progress with regard to the respect for and enjoyment and full exercise of human rights and fundamental freedoms.

41. The Commission had a moral duty therefore to co-operate with the Government of Guatemala in its efforts to strengthen and consolidate the democratic process, which had been achieved at the cost of so many sacrifices by the people of his country.

42. Mr. PORRET (International Fellowship of Reconciliation) said that one of the priorities of the programme of advisory services in the field of human rights was to assist in the establishment or development of regional and human rights institutions and to strengthen or establish national human rights institutions and infrastructures. Such assistance was of the greatest importance since it had to be adapted to the requirements of each individual country or region.

43. His organization was particularly concerned about the tribal societies in China, Viet Nam, Laos, Thailand, Burma, Bangladesh, northern India, the Philippines and Indonesia, which had to confront particularly difficult problems. Their way of life was rather fragile and they had few opportunities of influencing development plans even those of direct concern to them. Most of those peoples had similar problems in the various countries in which they

lived, although the degree of tolerance varied greatly from one country to another. There was a need for regional and transnational co-operation as well as for an exchange of experience and results.

44. There was no institute entirely devoted to the tribal societies of Asia with human rights as its main focus. There was a need for intensive training which should include all human rights, civil and political and economic and social alike. Such training should include courses on the preservation and development of local languages and teaching of the national language, so as to ensure wider access to the national life, courses on new agricultural techniques, and studies on the traditional use of plants for medical purposes.

45. Ms. MENCHU (International Indian Treaty Council) said that she belonged to a group of Indians which constituted the largest minority in Guatemala and which was the most affected by the situation of conflict prevailing there. In January 1980, her father had been burned alive together with 39 other persons in the Spanish Embassy massacre. Her mother had been kidnapped, raped and murdered. Most of her brothers had disappeared, been tortured and murdered.

46. She had left her country in 1981 and had since devoted part of her life to defending the human rights and fundamental freedoms of all the peoples of Guatemala as well as of the Indians of North America. In 1989, she had returned to Guatemala but had left again after receiving threats. Many of her compatriots, who had had to leave Guatemala, had tried to find a solution to the problem.

47. Three years previously, she had told the Commission that the situation in Guatemala would not change, that there would be more murders and more torture and that the Commission should take an appropriate decision. It was inconceivable that the Expert should say that Guatemalan culture was violent and that the people were responsible for the violence. The people in Guatemala were completely unaware of their human rights.

48. It seemed as if the Commission was deaf to the cries of the victims. She hoped, however, that even if it did not listen to the voices of the victims, the Commission would at least heed the recommendations of the non-governmental and intergovernmental organizations that were urging it to appoint a special rapporteur.

49. She had just received a cable from Guatemala reporting that the military commander of the region outside the capital was forcing the inhabitants of 16 rural hamlets to sign a declaration running counter to the national protests against the unconstitutionality of the so-called Civilian Self-Defence patrols. She had also been informed that indigenous farmworkers and poor Ladinos who were demanding a fair wage on the agricultural-export plantations had been subjected to militarization, threats and intimidation.

50. In the circumstances, if the Commission did not take specific steps, the Guatemalans would continue to lose their lives. Many democratic and progressive sectors in her country were hoping for a message from the Commission. It was unacceptable that countries which violated human rights should be shielded from criticism. Technical assistance should be given to the people, so that they would know how to assert their rights, rather than to those who violated human rights.

51. Mr. GAJARDO (World Federation of Democratic Youth) said that the political violence which had characterized Guatemala during 1989 had been comparable, in its intensity and horror, to the worst period of the dictatorship. His organization was particularly interested in the cases of 13 students who had been kidnapped between August and December 1989. Six of them had been murdered and their bodies showed obvious signs of torture, while seven were still missing. They were among the nearly 15,000 cases of serious violations of the right to life and the security and liberty of the person recorded during the previous year.
52. On the basis of evidence, the main instigators of the systematic violation of human rights were the paramilitary gangs, which were controlled and led by the army; the national police; the army itself and the other security forces. In the conflict zones, the army had persisted in the indiscriminate shelling of populated areas and lands under cultivation, particularly in the departments of Quiché, San Marcos and Péten.
53. The situation in Guatemala was known to the members of the Commission; the Expert, whose report (E/CN.4/1990/45 and Add.1) had been largely devoted to describing it; the Government, because of its ties to those who were committing the violations; and legislative bodies, such as the Commission on Human Rights of the Guatemalan Congress, which had adopted a resolution requesting the United Nations to appoint a special rapporteur.
54. The United Nations provided an impressive level of advisory-service assistance to the Guatemalan Government, totalling \$220,000 according to the Centre for Human Rights. The work done by the Centre was commendable, but the situation did not improve. Perhaps the answer lay in a misinterpretation of the purpose of advisory services, which were construed by some as a means of softening the criticism of a country's situation.
55. The Under-Secretary-General for Human Rights had rightly emphasized that, on the contrary, advisory services were not a substitute for the obligation of States to respect international standards in the field of human rights and the Expert had pointed out the gap between written law and reality in Guatemala. Legal standards were essential but, if they were not applied in practice, they were of little use. Advisory services could be of help to Governments which really intended to make use of them. They should not be seen merely as an expression of confidence on the part of the international community.
56. In Guatemala, the advisory services programme had helped to divert attention from the causes and magnitude of the violations of fundamental rights and freedoms. A study prepared by the Lawyers' Committee for Human Rights, a non-governmental organization, affirmed the need for the Commission to develop objective and specific criteria for determining whether a country had demonstrated sufficient respect for international law to be included in the programme. The first criterion was the degree of independence of the Judiciary and the extent to which civil courts could try members of State institutions who were charged with human rights violations; the second was the extent to which law enforcement agencies were separated from other bodies, such as the army and the third was whether there were reliable reports that the security forces perpetrated torture, disappearances and political assassinations.

57. It was not sufficient to rely solely on a Government's good intentions. While it was important to support democratic processes, it was essential to monitor the effectiveness of the measures taken by transitional Governments to protect and ensure respect for human rights. He urged the Commission to appoint a special rapporteur to investigate the situation of human rights in Guatemala and to report to the Commission at its following session.
58. Mr. WADLOW (World Association for World Federation) said that the imposition of states of emergency and martial law often signalled the inability of Governments to deal with fundamental problems of a structural nature. It might be a question of economic changes for which the people had not been adequately prepared, as in the cases of Argentina and Venezuela, where sharp price increases linked to those countries' efforts to reduce their foreign debt had led to rioting. There must be a popular understanding of economic reforms or such policies would be endangered. The advisory services programme could play an important role in facilitating awareness of economic issues.
59. A second factor in the imposition of martial law was violence linked to demands for self-determination, including demands for the modification of territorial jurisdiction. The situations in Yugoslavia, the Soviet Union, Tibet, the Arab territories occupied by Israel and Northern Ireland clearly fell into that category. It was obviously a delicate task for the advisory services programme to offer advice and training in situations linked to self-determination, yet that was the area in which the greatest tensions existed and constructive solutions must be found.
60. The third type of state of emergency situation arose when there were demands for radical changes in the structure and functioning of the Government, as in China and Myanmar. In both cases, student-led demands for reform had been met by uncompromising Governments. He wondered whether the advisory services programme could teach a spirit of compromise and dialogue to aging military leaders. Increasingly sophisticated studies on styles of negotiation were being produced, and the advisory services programme should be in the forefront of training military and other governmental administrators in the techniques of peaceful negotiation.
61. In the fourth type of situation, tensions resulted from the transition from dictatorship to nascent democracy. Such were the cases in Equatorial Guinea and Haiti, where the advisory services programme had laboured under difficult circumstances. In Romania, a State which was seeking new political institutions, a new economic system and a new relationship among its ethnic populations, the previous lack of freedom had prevented open discussion of the modalities of reform and the emergence of an alternative leadership. The advisory services programme must be prepared to facilitate the transition to a society of law and justice.
62. Ms. BRANTLY (World Association for World Federation) said that one way in which the advisory programme could provide assistance with respect to emergency situations was by ensuring that the procedural and substantive provisions of article 4 of the International Covenant on Civil and Political Rights were respected, and more specifically the provisions relating to proportionality and the recognition of an imminent threat. A society and a State of law and justice could exercise its right of self-defence and impose a state of emergency only to the extent that such measures were intended to resolve an unstable situation and were proportional to it.

63. Accordingly, any derogation from the obligations arising under the Covenant must specifically relate to the emergency in question; otherwise, it would serve to fuel the emergency, not to resolve it. For example, in Yugoslavia, the derogation from the right to work did not help to resolve the ethnic tension in Kosovo, but rather aggravated it. In Tibet, martial law had been imposed after peaceful demonstrations had ended, so that there was no relationship between the threat alleged by the Chinese Government and the demonstrations that had ostensibly caused it.

64. The advisory services programme should therefore establish a mechanism which would enable Governments to resolve the tensions in their countries which had led to the declaration of a state of emergency, and ensure that the derogations from their human rights obligations were proportional to the threat which they were allegedly addressing.

65. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 22.

66. Mr. Ditchev (Bulgaria) took the Chair.

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 14)
(E/CN.4/1990/29, 30, 31, 53 and Add.1-4 and 72; E/CN.4/1990/NGO/29)

67. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing agenda item 14, said that, pursuant to resolution XI of the International Conference on Human Rights held at Tehran in 1968, the United Nations had carried out various studies of the impact of scientific and technological developments on the enjoyment of human rights. The issue had been on the agenda of the Commission since 1971 and had been the subject of 20 resolutions adopted to date. At its thirty-ninth session, the Commission had decided to consider the item on a biennial basis, beginning at its fortieth session.

68. By its resolution 1989/40, the Commission had decided to establish an open-ended working group to examine the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care. The working group had met from 8 to 19 January 1990 and had made considerable progress. In its resolution 44/134, the General Assembly had welcomed the establishment of the open-ended working group and requested the Commission to consider the subject at its current session in the light of the group's deliberations and recommendations.

69. By its resolution 1989/43, the Commission had decided to transmit to the General Assembly, through the Economic and Social Council, the final report of the Special Rapporteur on guidelines for the regulation of computerized personal data files (E/CN.4/Sub.2/1988/22). The Commission had also requested the Secretary-General to submit the report, together with documents containing the views expressed by Governments (A/44/606 and Add.1), to the General Assembly for consideration at its forty-fourth session. In its resolution 44/132, the General Assembly had expressed its appreciation for the report and had further invited the Special Rapporteur to submit to the Commission at its forty-sixth session a revised version of the draft guidelines, taking into account the comments and suggestions made by Governments. In addition, the General Assembly had requested the Commission to examine the revised draft guidelines and, after any necessary modifications, to transmit them, through the Economic and Social Council, to the General Assembly at its forty-fifth session for final adoption.

70. Since the proclamation by the General Assembly in 1975 of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, the General Assembly, the Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities had concentrated most of their endeavours on the implementation of the Declaration and had adopted measures in that regard.

71. In its resolution 44/133, the General Assembly had noted the value of the Declaration in promoting human rights and fundamental freedoms. It had requested the Commission to continue to give attention, in its consideration of the current item, to the question of the implementation of the Declaration.

72. At its forty-first session, the Sub-Commission had adopted two resolutions and one decision relating to the item. By its resolution 1989/12 entitled "Movement and dumping of toxic and dangerous products and wastes", it recommended that the Commission request the United Nations Environment Programme to enter into negotiations with the Organization of African Unity with a view to finding global solutions to the problem of transboundary movement of hazardous wastes and their disposal. By its resolution 1989/39 entitled "Respect for the right to life: elimination of chemical weapons", the Sub-Commission had decided to give further consideration to that matter. Furthermore, in its decision 1989/108 entitled "Human rights and environment", it had decided to ask one of its members to prepare a concise note setting out methods by which a study on the subject could be made.

73. Mr. STEEL (Chairman-Rapporteur), introducing the report of the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care (E/CN.4/1990/31), said that, as could be seen from paragraphs 6, 7, 8 and 9 of the report, many Governments and non-governmental organizations and the World Health Organization (WHO) had participated actively and constructively in the activities of the Working Group. He paid particular tribute to WHO and to the delegations of a number of non-governmental organizations, without whose expert assistance the progress made would not have been possible. He also expressed his gratitude for the essential groundwork laid in the Sub-Commission by Mrs. Daes and Mrs. Palley.

74. He drew the Commission's attention to the reference in paragraphs 13 and 14 of the report to working methods. It was to be hoped that the Commission would agree that the decision to defer certain matters until consideration of the substantive articles had been completed was a wise one. Some of the problems left until a later stage might prove to be difficult technically, but he hoped that they would not produce problems of substance, and it would be a lot easier to solve them once the deliberations had been concluded. Indeed, some might have solved themselves by then. All members of the Working Group had attached importance to the need, in due course, to look again at the form, placement and, in a few cases, the substance of certain articles so as to insure consistency. A technical review would also be needed eventually,

75. Some of the articles represented the outcome of protracted discussions, during which the Working Group had reassessed the problems involved and moved slowly towards statements of principle that were both general enough to fit the wide variety of circumstances found in countries with different cultural

traditions and at different stages of economic development and sufficiently precise to provide real protection for the rights of persons with mental illness and the others concerned. Those who might wish to comment on any of the draft articles must bear in mind the need to strike a proper balance between universality and particularity.

76. With regard to paragraph 19, he thought that the Commission could be satisfied with the progress made to date and that the Working Group could reasonably ask to be allowed to carry on with its work at another session. There was a very good chance that it could complete its task in one more session, but it was of course for others to decide when that next session, if any, should be.

77. There had been a general sentiment in the Working Group that it would be better to have a rather longer interval between its next session and the next session of the Commission itself than the one week that had elapsed in 1990. That pointed to the Working Group meeting at least a few weeks earlier the next time, perhaps in November or even a little sooner.

78. Mrs. ILIC (Yugoslavia) said she regretted that the United Nations University had not been able to submit a report on the impact of scientific and technological developments on human rights for consideration by the Commission at its current session, and would not be in a position to submit it until 1991.

79. When implementing scientific and technological developments, particularly in developing countries, special attention must be paid to the protection and promotion of human rights. Greater emphasis must be placed on the interrelationship between the advancement of science and technology, the protection of the environment and human rights concerns.

80. Scientific and technological developments must be taken fully into account in future United Nations standard-setting activities and their impact on human rights monitored. It was to be hoped that the United Nations University's study would also include proposals for future activities at the national, regional and international levels.

81. Mr. ANCOG (Philippines) said he added his delegation's voice to the call for continued consideration of the impact of science and technology on the promotion and protection of human rights. The Philippines awaited with keen interest the result of the study being undertaken by the United Nations University which, it hoped, would be available in early 1991 for consideration by the Commission at its forty-seventh session.

82. His delegation congratulated the Sub-Commission's Special Rapporteur on his revised version of the draft guidelines for the regulation of computerized personal data files (E/CN.4/1990/54) which would provide Governments with the basic framework for enacting legislation that would end one of the most subtle forms of invasion of privacy. Those guidelines could not yet be considered exhaustive, however, because other areas also existed in which unauthorized persons could gain access to confidential personal files through sophisticated electronic manipulations.

83. His delegation supported the recommendation by the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care that it should hold a two-week session before the forty-seventh session of the Commission so as to facilitate the elaboration of the final text of the draft body of principles and guarantees.

84. The impact of science and technology on the environment and on agricultural production capacity in developing countries required further investigation. The depletion of the ozone layer and climatic changes would ultimately affect the quality of life. The revolution in gene technology might deprive the poor of the right to produce their traditional crops and have an adverse impact on their comparative advantage because of the accelerated move towards the intellectual property protection of bio-technological inventions.

85. His delegation called for vigilance with regard to scientific and technological activities that encroached upon human rights and urged a thorough analysis of the implications of scientific and technological developments for the protection of those rights.

86. Ms. BECK (World Movement of Mothers) said that her organization had confidence in scientific and technological progress, but it must not be used to violate the right to life. A human being was not an organ that could be removed from the body of the mother at will. Every person began a unique life cycle at the moment of conception. Those who were in favour of abortion in all its forms, including the use of the abortion pill RU 486, must remember that no penal code of any country gave the right to kill another human being. The Commission must ensure that scientific and technological progress benefited life, not death.

87. Mr. FLACHE (World Federation for Mental Health) expressed satisfaction at the distinct progress made by the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care. It was to be hoped that, when it received the report of the Working Group, the Commission would take into account the progress made in preparing the text and authorize, with the approval of the Economic and Social Council, a second meeting of two weeks of the Working Group, preferably before the end of 1990, so that the final report could be submitted to the Commission at its forty-seventh session.

88. The matter required urgent attention, because the human rights of mentally-ill persons continued to be violated either deliberately or through neglect, and it was high time that the Commission took a stand on the problem with a clear and definitive declaration.

89. Ms. TOLEDO (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that there were two new technological advances that helped in the identification of missing persons. The first technique involved an immunogenetic data bank containing the genetic data of the families of missing children, whose identity could then be established. The data bank had also been conceived as a way to combat trafficking in children. The system offered a wide range of possibilities for recovering children who had been abducted and returning them to their rightful families.

90. The other technique involved forensic anthropological investigations carried out by an Argentine team set up by the American Dr. Clyde Snow. The technique, which had been used in Argentina, Chile and Bolivia, helped to identify human skeletons found in unmarked graves and to determine the cause and the manner of death. With its aid, the investigators had elucidated numerous cases of missing persons, and many families had learned the fate of their loved ones. Unfortunately, the laws granting impunity or amnesty had closed the doors of justice and the evidence gathered through such techniques could not be used to punish the perpetrators of those human rights violations.

The meeting rose at 1 p.m.



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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE FIRST PART* OF THE 46th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 March 1990, at 3.30 p.m.

<u>Chairman:</u>	Mrs. QUISUMBING	(Philippines)
later:	Mr. DITCHEV	(Bulgaria)

CONTENTS

Statement by Mr. Adamishin, Deputy Minister for Foreign Affairs of the Union
of Soviet Socialist Republics

* The summary record of the second part of the meeting appears as
document E/CN.4/1990/SR.46/Add.1.

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at this session will be consolidated in a single corrigendum, to be issued
shortly after the end of the session.

Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission:

- (a) Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms;
- (b) National institutions for the promotion and protection of human rights;
- (c) Co-ordinating role of the Centre for Human Rights within the United Nations bodies and machinery dealing with the promotion and protection of human rights (continued)

Human rights and scientific and technological developments (continued)

Statement made by the representative of Yugoslavia in exercise of the right of reply

Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-first session

The meeting was called to order at 4.05 p.m.

STATEMENT BY MR. ADAMISHIN, DEPUTY MINISTER FOR FOREIGN AFFAIRS OF THE UNION OF SOVIET SOCIALIST REPUBLICS

1. The CHAIRMAN introducing Mr. Adamishin, said that he was the official in the Soviet Ministry for Foreign Affairs responsible for European matters and questions relating to human rights. He had a degree in economics and a doctorate in history and was also the author of a number of works on various aspects of international relations. During his service as official in charge of African matters within the Ministry for Foreign Affairs, he had taken part in the negotiations concerning southern Africa. He had also participated in many diplomatic conferences on various issues in the field of international relations.
2. Mr. ADAMISHIN (Deputy Minister for Foreign Affairs of the Union of Soviet Socialist Republics) said that the stunning changes that had swept across the world, and Europe in particular, could be interpreted in a variety of ways, but there was no denying that they represented a real breakthrough in democracy. However, it was not only things old that were being jettisoned; a vigorous search was under way for new patterns of social life.
3. The Soviet Union welcomed that kind of democratic revolution without reserve, for it had initiated the current changes. In the USSR, democratization was not only an effect, but also a modus operandi, of perestroika. It was not a time-serving twist of policy, but a long-term strategy pursued by the USSR both in its domestic and international affairs.
4. The Soviet Union sought to build, without discarding the imperishable socialist ideals of equality, liberty and social justice, a society centred on the rights, interests and conscious responsibility of the individual. Such a society could not be built when one political party enjoyed a monopoly on power, or without introducing a full complement of modes of ownership, according real rights to each individual and to teams of workers, associations, constituent republics, national entities and ethnic minorities, and establishing a State based exclusively on the rule of law. The reforms being carried out in the USSR with perseverance, yet with great difficulty, were intended to achieve those goals. The most crucial progress made so far, without which it would have been impossible to move ahead at all, had been releasing the people from intellectual and political bondage, but the massive energy released as a result had not always been put to constructive use.
5. Bodies wielding supreme power on the basis of new principles had been formed: at present, all government institutions were undergoing structural reform, power was being transferred to the Soviets and the Soviet federation was being overhauled.
6. Economic reform had proved to be a much more formidable task than had been expected, but a solid legal foundation was being laid for it. The law on ownership and the fundamental principles of land legislation, under which peasants would enjoy the right to land tenure and inheritance, had gone through on first reading.

7. In the area of human rights, laws governing exit and entry procedures in the USSR and on freedom of conscience and religious association, as well as other legislative acts, all designed to conform to the highest international standards, were in the offing.
8. The new law on the status of judges that had entered into force on 1 December 1989 was intended to secure real immunity from pressure for the Judiciary. The Supreme Soviet had declared an amnesty for ex-servicemen who had committed crimes or offences during their tour of duty in Afghanistan - over a year had passed since the last Soviet soldier had left that country. The so-called political articles had been dropped from the Soviet Penal Code, and individuals who had been sentenced under those articles had been released. The Soviet Union thus no longer had any qualms about consideration by the Commission of the issue of political prisoners in Soviet territory.
9. In the area of psychiatric treatment, the Soviet Union had contributed to the elaboration by the United Nations of a draft body of guidelines, principles and guarantees for the protection of mentally-ill persons. Such norms were either already contained in Soviet legislation or were being enacted now.
10. The difficult and sometimes tragic occurrences that accompanied perestroika should not obscure the fact that the prevailing movement in the Soviet Union now was the reaffirmation of democracy.
11. The Soviet Union realized the full measure of its responsibility and of the consequences for itself - and not only for itself - that attended the success or failure of the enormous enterprise it had undertaken. He himself was firmly convinced that his country would be able to overcome the difficulties.
12. Perhaps mankind was now witnessing the birth of a new civilization, not founded on violence and reaching the highest human standards. The member countries of the international community shared common ideals, after all, and had formulated, for the purpose of defending human rights and freedoms, certain economic, political and cultural standards that were in no way abstract.
13. Those universal standards had been codified in the Universal Declaration of Human Rights and other human rights instruments, a great many of which had already been incorporated in the Soviet Constitution.
14. In that connection, the Soviet Union called upon States that had not yet done so to accede to the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, so that the standards incorporated in those instruments might become truly universal.
15. The international community was aware of the urgent need to consider all international problems, from disarmament to ecology, from the standpoint of respect for human rights and for the right to free choice of all peoples.
16. Specifically, the building of a common European home required the unswerving implementation of existing international legal rules - from the basic post-war agreements to the Helsinki Final Act.

17. In order for human rights to be respected, they must first of all be made known, and the basic human rights documents should therefore be made available to all. Over 40 million copies of the Universal Declaration of Human Rights had been printed in the Soviet Union in 1989.

18. His country was co-operating fruitfully with the Centre for Human Rights in a number of areas: for example, two seminars had been organized in Moscow with the assistance of Mr. Martenson. The Soviet Union called upon other countries to follow its example in hosting such meetings.

19. While the Soviet Union was open to co-operation, advice and criticism, it would not tolerate claims by anyone to hold a monopoly on truth or anyone talking down to it. In that connection, his delegation warmly welcomed the notes of self-criticism introduced into their statements by a number of delegations, including the representative of the European Community. It would be presumptuous to claim that democracy was inherent in any one social system, or that freedom of expression, of assembly and of conscience, free elections, parliaments and the separation of powers - those primary achievements of world history - had been authored by the Western political system alone. That system had also given birth to nazism and fascism.

20. On the other hand, socialism had emerged, not on the sidelines, but in the mainstream along with other social systems. Mankind had a duty to turn to advantage the great discoveries made by civilization over thousands of years. The Soviet Union, for its part, had recognized that new principles regarding social justice, collective rights, self-government and true power of the people could be proposed only for the purpose of furthering human rights - not to detract from them.

21. The Soviet Union supported the Commission's efforts to combat gross and massive human rights violations in the occupied Arab territories and in southern Africa.

22. The economic and cultural context, and in particular, the local traditions, of a given civil society must be taken into account in human rights efforts. One must refrain from using pressure: in some cases, the main criterion to be applied was whether a given State was truly moving towards respect for human rights. In that connection, he wished to confirm that the Soviet Union would sign the Optional Protocol to the International Covenant on Civil and Political Rights soon - certainly before the Commission's next session.

23. Ways of instituting confidence-building measures should be considered, not only in the military field, but in human rights activities as well. Such measures might include mutual access to the mass media, exchanges of delegations during elections and referendums, invitations for non-governmental organizations to attend public court hearings when there was reason to believe the accused might not get a fair trial and invitations to special rapporteurs of the Commission on Human Rights responsible for studying the on-site evolution of various situations.

24. The work of the Commission on Human Rights had long been a mirror reflection of the ideological rivalry between East and West and had served as an arena for mutual accusations and recriminations. Fortunately, the Commission had put an end to such confrontations, which had now given way to

civilized dialogue. The storm of democratic renewal was sweeping away brick walls and iron curtains and bringing dynamism and hope to liberated peoples. Everything must be done to prevent the storm from becoming a hurricane of violence, suffering and destruction.

25. The construction of a common European home, the proposal for a European legal space, the upcoming meetings in Copenhagen and Moscow and the summits among European countries, the United States and Canada scheduled for 1990 and 1992 combined to open up brand new prospects for human rights. The structural pillars of civilization embodied in the principles and rules of international law, that common patrimony of mankind, must be reinforced.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

- (a) ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS;
- (b) NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS;
- (c) CO-ORDINATING ROLE OF THE CENTRE FOR HUMAN RIGHTS WITHIN THE UNITED NATIONS BODIES AND MACHINERY DEALING WITH THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (agenda item 11) (*continued*) (E/CN.4/1990/18 and Add.1, 19, 20, 49, 54, 65 and 79; E/CN.4/1990/NGO/2 and 39; A/44/660 and Add.1; and E/AC.51/1989/2)

26. The CHAIRMAN invited Mr. Paul Bouchet, Chairman of the French National Human Rights Advisory Committee and member of the Council of State, the country's highest administrative organ, to make a statement under agenda item 11 (b).

27. Mr. BOUCHET (France) said that national institutions had an extremely important role to play in promoting true respect for human rights: even in democratic countries, constant vigilance was required in that area.

28. At the end of the Second World War, an Advisory Committee on the Codification of International Law and the Defence of the Rights and Duties of States and of Human Rights had been set up in France by a decree of 17 March 1947. The Committee had been chaired by René Cassin and had participated actively in drafting the Universal Declaration of Human Rights. As the years went by, however, it had gradually become necessary to enhance the Committee's legal competence, expand its membership and strengthen its sphere of action. The bicentenary of the French Revolution in 1989 had provided the opportunity to reorganize the Committee, which had become the National Human Rights Advisory Committee.

29. Since 1984, the Committee had been authorized to advise the Prime Minister, on a consultative basis, on all human rights issues both domestic and international, but it had been able to do so only on official request. That limitation having been removed by legislative act of 31 January 1989, it now enjoyed the freedom to act without external instructions, de facto as well as de jure, that enabled it to carry out its mission to the full. Its membership had been expanded on several

occasions, particularly in 1989, when the number had been increased to 67, 11 representing the relevant Ministries and having advisory status. The remaining 56 members represented non-governmental organizations, trade unions and religious groups and comprised experts on human rights and parliamentary matters: they had the right to take part in debate. Such a composition was a much more satisfactory manner of providing for the sociological as well as ideological pluralism that the Committee's task seemed to require. Finally, the Committee's operating procedures had been reinforced in a number of ways. It was now directly responsible to the Prime Minister, and submitted its opinions to him without intermediaries. It had regular contacts with the various Ministries through the 11 representatives appointed for that purpose to serve on it. The two members who represented Parliament guaranteed the Committee's liaison with the legislative branch and submitted an annual report to the National Assembly on the Committee's activities. The Committee was also able to formulate opinions during the drafting of laws and legislative acts in the Council of State, for its Chairman and three of its members were also members of the Council. Finally, the Committee's views were published in the press so that public opinion was duly informed.

30. The Committee was empowered to take action when and where necessary, in response to given situations, but its activities were generally planned in an annual programme specifying the priority objectives to be pursued by four study groups, three for domestic affairs and a fourth for international matters. The work of the three groups that concentrated on domestic affairs revolved around priorities that reflected the three main factors identified in the preamble to the 1789 Declaration of the Rights of Man and Citizen as being the sole cause of public misfortune and the corruption of Government, namely failure to be aware of, observe and respect human rights. Every year the rights that were least well known, least well observed and least respected in France were identified. For 1990, the priority areas to be studied by each of the groups were: (i) availability of legal recourse, a topic under which a report submitted to the Minister for Justice by the Committee on Criminal Justice and Human Rights, which was responsible for overseeing the entire criminal justice system, would be considered; (ii) efforts to prevent economic and social exclusion, particularly of foreigners, members of the military and criminal offenders; (iii) efforts to prevent discrimination, particularly racist discrimination. The group responsible for the third topic prepared an annual assessment of racism in France: the report for 1990 would soon be submitted to the Prime Minister. In the past six months, the Committee had had occasion to give its views on three pieces of draft legislation relating to highly complex matters, namely a preliminary draft law on biology and human rights (opinion dated 29 September 1989), a draft law on the rights and protection of individuals hospitalized on account of mental illness, and on the conditions of their hospitalization (opinion dated 7 December 1989), and a draft law on the protection of persons suffering from illnesses, including AIDS, and of the disabled, against discrimination in daily life, employment and housing (opinion dated 8 February 1990).

31. The group that specialized in international affairs was currently working on a draft opinion on the implementation and progressive development of international humanitarian law, with special reference to the newly defined duty to give humanitarian assistance and the problems posed thereto by Protocols I and II to the Geneva Conventions; the participation of non-governmental organizations in the Conference on the Human Dimension of the

Conference on Security and Co-operation in Europe; and the organization of a seminar on the role of computer technology in the promotion and protection of human rights.

32. The fact that the Committee had an advisory role obviously did not prevent it from intervening in the individual cases that came up before it.

33. In conclusion, he said that France welcomed the opportunity presented by the current session for an exchange of information among all those concerned with the creation or development of national human rights committees. It hoped that the exchange might be continued and broadened, for it constituted an effective tool in the common efforts to protect and promote the fundamental rights of the human person.

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 24)
(continued) (E/CN.4/1990/29-31, 53 and Add.1-4 and 72; E/CN.4/1990/NGO/29)

34. Mr. WHITAKER SALLES (Brazil) said that today, 15 years after the adoption by the General Assembly in 1975 of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind - an initiative that Brazil had supported - the need to examine the dangers and threats that might be intermingled with scientific and technological progress had only deepened. Technological progress obviously had been, and would continue to be, a major factor in the transformation of society. It was evident, however, that it could have an adverse impact on human rights, an impact of which the international community had been aware ever since the Proclamation of Tehran in 1968.

35. His delegation had always taken an interest in and expressed its firm support for the work done by the United Nations system in the area of relations between human rights and scientific and technological progress. It had fervently hoped that the United Nations University would continue to study the positive and negative effects of technological progress on human rights and fundamental freedoms, in conformity with Commission resolution 1988/59. It accordingly regretted the fact that the research phase of the project had been delayed and that the final report on the topic was not expected to be ready before February 1991, as was stated in paragraph 3 of document E/CN.4/1990/29. His delegation had always been concerned over possible infringements of the privacy of individuals that might result from technological progress, especially in the field of electronics. It therefore welcomed the fact that the Commission had before it the revised version of the guidelines for the regulation of computerized personal data files prepared by the Special Rapporteur, Mr. Louis Joinet (E/CN.4/1990/72), which took into account, inter alia, the comments and suggestions submitted by some Governments.

36. His delegation had also followed with interest the Commission's work in the field of psychiatry, and in particular, its standard-setting activities for the protection of the rights of the mentally ill. It took note with appreciation of the report of the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care (E/CN.4/1990/31). It welcomed in particular the progress made by the Working Group at its first session, which offered good prospects for the completion of a consensus text that could be of universal value in the field of mental health care.

37. It was impossible to deny the crucial importance of science and technology in creating the conditions for rapid and sustained social and economic development, particularly in the developing countries, or to contend that such development was not essential to the effective realization of the human rights, including the economic and social rights, of the peoples of developing countries. That principle had in fact been incorporated in the Declaration on Social Progress and Development in 1969 and, in 1975, in article 5 of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind.

38. The scientific revolutions that had occurred had not only totally reshaped the role of man in the cosmos but had actually given him the power to destroy his heritage and even his race. Man's view of himself and of his relations to his surroundings and his fellow man had been dramatically altered, and society was confronted with new problems whose human rights aspects were not very well understood. Indeed, events that did not at first seem to be relevant to human rights were increasingly being seen to have a direct effect on the enjoyment and exercise of those rights: for example, progress in biomedical technology and genetic engineering could give rise to serious abuses that might have an adverse effect on the basic rights of the human person.

39. The United Nations could play a crucial role, and the Commission on Human Rights in particular would have many challenges ahead of it in the immediate future. No matter how fast it moved, however, it would be hard pressed to match the pace of the breakthroughs taking place every day in science and technology.

40. Mr. Ditchev (Bulgaria) Vice-Chairman took the Chair.

41. Mr. BARSH (Four Directions Council) said that at its most recent session, the General Assembly had approved proposals for a United Nations Conference on Environment and Development, to be convened in Brazil in June 1992, but the question of human rights did not figure in the plans for the Conference. That was regrettable. Human rights and the environment were interrelated, firstly, because environmental degradation could directly affect the rights to life, health and an adequate standard of living; second, because by destroying the resources needed for development, environmental degradation could place limits on the realization of all human rights; and third, because violations of human rights often led to the destruction of the environment.

42. The first two points were fairly obvious. The third was somewhat less apparent, yet leaving aside the effects of war and violence, one could easily see that people living in conditions of gross inequality, extreme poverty and repression tended to use up their environment quickly: they often had little other choice. For example, the destruction of rain forests was the work not merely of transnationals but also of small-scale farmers who had been displaced by industrialization. They exhausted their land before selling out to cattle ranchers who could operate on relatively poor soils. Exactly the same process had resulted in the formation of the "Dust Bowl" in the United States a century ago.

43. When development slowed or stalled, competition among various groups in society intensified, encouraging migration toward frontier areas and accelerating the use of natural resources. The Four Directions Council was

sensitive to the particularly disturbing situation of indigenous peoples caught up in that process because they had lost most of their original land. In recent years, one witnessed the increasing disposal of their natural resources, accompanied by growing income differences which, in a vicious circle, accelerated the process, since a small élite encouraged the intensive exploitation of resources in order to appease community discontent. In general terms, people tended to conserve their environment when they felt secure, when they believed they enjoyed a fair share of economic benefits and that they participated fully in economic decisions.

44. Ms. GAER (International League for Human Rights) said that her organization would urge that, in addition to the topics long addressed by the Sub-Commission and the Commission in the agenda item under consideration, due consideration should be given to a number of others: AIDS and human rights, the use of forensic techniques to improve the investigation of disappearances and executions, protection against waste dumping, and the use of technology and women's control of their reproductive capacity.

45. The Commission had long addressed the current agenda item without much coherence or sense of priorities. Her organization deeply regretted that the study of the effects of scientific and technological progress on human rights, which the United Nations University was to have carried out, had not been completed in time for the current session, and that the preliminary study submitted two years ago had been extremely sketchy.

46. The misuse of television, video and fax technology was illustrated in a report by the International League for Human Rights and the Ad Hoc Study Group on Human Rights in China entitled "Massacre in Beijing". The report indicated that the Chinese authorities had intercepted video tape materials being transmitted by satellite to ABC Television in the United States. The Chinese authorities had televised a segment in order to accuse Mr. Xiao Bin of spreading false rumours about the clean-up of Tianenmen Square; viewers had been invited to look for Mr. Xiao Bin and to turn him in to the police. A few days later, he had been shown on the evening news programme in police custody, and he had subsequently been sentenced to 10 years' imprisonment for his "crime". In China, the receipt of documents transmitted through fax machines had been prohibited. Letters transmitted by fax from abroad, especially from Hong Kong, were carefully monitored by the authorities, in clear violation of article 12 of the Universal Declaration.

47. Asia Watch, a New York-based human rights organization, had reported in detail on those and other abuses committed with the use of modern data and surveillance technology. The Commission should make a public statement deploring such abuses and subject violations of human rights committed through modern science and technology to a serious review.

48. Mr. EYA-NCHAMA (International Movement for Fraternal Union among Races and Peoples) described the biotechnological techniques used to determine the family relations of children at the request of the "Grandmothers of the Plaza de Mayo", an Argentinian association that formed part of his organization. After lengthy research, Dr. Fred Allen of the Blood Centre of New York, together with the American Association for the Advancement of Science of Washington, D.C., had developed a method for using blood analyses in tracing family ties that was 99.9 per cent reliable.

49. Dr. Mary Claire King and Dr. Christian Orrego of the University of California at Berkeley had greatly contributed to the research, which had led to the identification of a so-called "grandparenthood" index based on analysis of blood groups, rhesus factors, tissue compatibility, erythrocytic isoenzymes and plasma proteins. The "Grandmothers of the Plaza de Mayo" had also collaborated with a geneticist, who had informed them about a method based on "genetic finger printing" that made it possible accurately to determine whether there were biological links between individuals whose family ties had been challenged. Carlos Durand Hospital at Buenos Aires had a laboratory that carried out haemogenetic analyses for the "Grandmothers of the Plaza de Mayo".

50. In the legal arena, the "Grandmothers of the Plaza de Mayo" had worked for the elaboration of draft legislation on a national genetic data bank for the members of families of disappeared children. In 1987, the draft had become Act No. 23511, having been approved by all the political parties represented within the Argentinian Parliament. Its main provisions concerned the establishment, within the immunology department at Carlos Durand Hospital, of a genetic data bank that would furnish information free of charge; the analysis of genetic markers, blood groups, tissue compatibility, serum proteins and erythrocytic enzymes in each case; the preservation of a blood sample from each family to be used in future analyses; the obligation of each judge to have studies of genetic markers done whenever there was any doubt about family relations; and the development of operational and identification standards for analyses performed at the national genetic data bank, elsewhere in the country or abroad. Given the current life expectancy in Argentina, the national genetic data bank would remain in operation at least through the year 2050.

51. The painful events that had occurred in Argentina from 1976 to 1983 had thus engendered great progress in the field of science and technology, which should, in its turn, further the defence of human rights. He called on the Argentinian Government to support the continuation of that kind of research, and on the entire international community to draw on the Argentinian experience in resolving cases of enforced disappearance.

52. Mr. NDIAYE (Senegal) noted that in its resolution 1986/9, adopted at its forty-second session, the Commission had invited the United Nations University, in co-operation with other interested academic and research institutes, to study both the positive and the negative impact of scientific and technological developments on human rights. To that end, a co-ordinating committee had been established to submit a report to the Commission. Pending the committee's conclusions, his delegation wished to stress the importance of the issue, particularly for the developing countries.

53. Toxic waste was a most urgent problem for those countries; the Commission had already adopted a resolution on that question at its preceding session. He also wished to mention the proliferation in Africa of medications, which young people often used as drugs, that were potentially harmful and were sold after their expiry date. The Commission and the Centre for Human Rights should turn their immediate attention to the issue of genetic and biological manipulation, which could gravely affect human nature and behaviour. The committee responsible for examining the question should continue its efforts. From the standpoint of the developing countries, he said that malnutrition, famine in desert and Sahel countries and planned parenthood and abortion were extremely important matters. There was a close interrelationship between

scientific and technological progress and the right to information, including on environmental matters, the transfer of technology, and its impact on all human rights, from the first to the third generation.

54. The Brandt report pointed out that only 1 per cent of scientific capability was devoted to the problems of development. States, intergovernmental and non-governmental organizations must be urged to devote still more attention to the problems of hunger, malnutrition, poverty and environmental degradation so as to contribute to the promotion of human rights.

55. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said it was regrettable that only two meetings, held at the end of the session at that, should be devoted to such fundamental issues as those in item 14 - all the more so as that item appeared on the agenda only every other year.

56. The Commission had been discussing the effects of scientific and technological progress on human rights since its twenty-seventh session, but the link between environmental degradation and human rights had far too often been overlooked.

57. The Sub-Commission, in its resolution 1985/7, had drawn attention to the dangers represented by harmful technologies, however, and it had subsequently adopted resolutions 1988/26 and 1989/12 on toxic waste. In 1989, it had decided to entrust Mrs. Ksentini with the task of conducting a study on environmental problems and their effect on human rights. The threats to human rights arising from growing environmental degradation had been considered at an ecological forum held in January 1990 at Moscow. The question of environmental security was also being studied by the Supreme Soviet of the Ukrainian Soviet Socialist Republic.

58. Human rights such as the right to health, and even the right to life, were affected by ecological change. The phenomenon was becoming increasingly significant, for while in the past the ecological balance had been jeopardized only intermittently, without any real effect on human rights, technological progress had now changed the situation. Legal protection measures against such threats therefore needed to be devised without delay, in the interests of individuals as well as of societies. Legal standards on ecology should be incorporated among the international human rights standards referred to in General Assembly resolution 41/120.

59. In his delegation's view, discussions on the subject within the United Nations, and particularly within the Commission, should focus on the ecological rights of man, which should be placed on the same footing as other human rights. The Commission and the Sub-Commission must take rapid action, and his delegation would therefore submit a draft resolution prepared in consultation with other members of the Commission and with non-governmental organizations.

60. Mrs. MARKHUS (Observer for the Libyan Arab Jamahiriya) said that scientific and technological progress undeniably opened up new prospects for the advancement of civilization and the enhancement of the living standards of peoples. The international community must therefore strive to consolidate peace and eliminate sources of tension, for only in an atmosphere of peace could scientific and technological achievements truly benefit human beings.

61. Her delegation wished to refer to the comments of the Libyan Government, contained in the report of the Secretary-General in document E/CN.4/1990/30, concerning the implementation of the Commission's resolution 1988/60. Those comments emphasized the great importance of taking practical steps to achieve disarmament, of using for the socio-economic development of third world countries the financial resources that would thereby be released, of directing man's creative abilities towards scientific research to benefit mankind, and of rechannelling the resources used by developed countries for the production of nuclear and other weapons of mass destruction to support socio-economic development throughout the world, and particularly in the countries that were suffering continuing acute economic crises due to their indebtedness.

62. The transfer of skills and exchange of views among countries were also indispensable to development. It was therefore deplorable that the United States should have imposed an embargo on the transfer of skills and the sale of industrial equipment to certain countries, including the Libyan Arab Jamahiriya, which American technicians were not even allowed to visit. Such measures were totally at variance with the objectives of peace and development.

63. Mr. OGOURTSOV (Observer for the Byelorussian Soviet Socialist Republic) said the twentieth century had seen an unprecedented amount of intellectual ferment that had nevertheless been accompanied by a broadening of the gap between the rich and the impoverished. Technological progress should make it possible to meet all of mankind's needs, yet the prospects it held out by no means benefited all human beings, far too many of whom continued to experience poverty and hunger. In most countries, the scientific revolution had either not begun, or the population had not yet experienced its benefits.

64. Science and technology were sometimes instruments of death; not only had technological progress failed to solve all existing problems, it had often brought on destruction. It was therefore important to ensure that science was used to protect the human being from unwholesome applications of scientific discoveries, especially those whose misuse might undermine the dignity and integrity of man.

65. His delegation believed that fruitful international co-operation by which scientific and technological progress could be used to benefit mankind was a priority for all. Through such co-operation, the material and intellectual potential of the entire world could be mobilized to further the interests of mankind and of all individuals.

66. Mr. BARKER (Observer for Australia) said that his delegation had participated actively in the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons; it believed the text was of key importance for the protection of a very vulnerable group of people in all countries of the world. The text would also be important as a means of preventing the abuse of psychiatry, an insidious form of human rights violation of which the international community had seen flagrant examples in the past.

67. His delegation thought it particularly important that the Group should complete its work as soon as possible. Significant progress had already been made in the two-week session in 1990, and the continuation of the drafting exercise should not be held up until the Commission's forty-seventh session. The Working Group should meet within six months, at the latest, of the end of

the current session, in order to undertake a technical review of the draft in time for it to be considered and adopted at the Commission's forty-seventh session.

68. Mr. ORLEY (World Health Organization) congratulated the Chairman-Rapporteur of the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care. The World Health Organization would continue to take an active part in its activities: it would like to see the Working Group resume its activities in a relatively short time, certainly before 1991. It welcomed the proposal that the resources, including financial ones, required to enable the Group to meet and complete its task in good time be made available to it.

69. Mr. WADLOW (International Fellowship of Reconciliation) said that the notion of ecological or environmental rights had already been enshrined in various international instruments that recognized the right to a sound, satisfactory and healthy environment. The relationship between human and environmental rights was developed fully in the report of the Brundtland Commission, Our Common Future, and the Commission on Human Rights had acknowledged that relationship in its work on the right to development and on indigenous peoples. Resolution 1982/12 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "Movement and dumping of toxic and dangerous products and wastes", also dealt with the relationship.

70. The Commission could make an important contribution to promoting the concept of environmental rights by becoming involved in the preparations for the United Nations Conference on Environment and Development, to be held under United Nations auspices in 1992. The preparatory committee would soon be holding its first meeting at United Nations Headquarters in New York. His organization recommended that, in addition to the note to be prepared by an expert from the Sub-Commission on the topic of "Human rights and the environment", the Commission should, for example, request from the Secretary-General an analytical report on the relationship between human rights and the right to a sound, satisfactory and healthy environment, taking into account views and information submitted by Governments, specialized agencies, United Nations bodies, regional intergovernmental organizations and non-governmental organizations. The analytical report should take as its starting-point the fact that mankind was a part of nature and that life depended on the uninterrupted functioning of natural systems. An understanding of the interdependence and value of all aspects of existence was intrinsic, not only to modern ecological theory, but also to the traditional world views of indigenous peoples as well as of Buddhism, Taoism and Vedanta. The analytical report should move towards a description of individual rights and responsibilities, drawing on those principles, which better reflected the real state of the world. The principle of the interdependence and indivisibility of human rights and fundamental freedoms, set out in General Assembly resolution 37/199, should also be taken into account.

71. It would be useful to study the implications of the precautionary principle, namely that any planned activity or substance whose production was envisaged must be submitted to tests to ensure that it would in no way harm the environment.

72. The ecological problems facing the entire planet were so urgent that they had to be tackled at all possible levels and in all possible ways: the whole human community must be engaged in exercising ecological responsibility. An understanding of ecological rights as human rights could help to focus that responsibility and to lay the ground for more comprehensive international instruments.

73. Indigenous peoples would benefit quickly from the recognition of ecological rights. It was to be hoped that the Working Group on Indigenous Populations could make a positive contribution to the 1992 Conference. The world views and life experience of indigenous peoples would be of great benefit to a forum which, in his organization's view, could help to promote the right to development and to make ecological rights central to the efforts of the international community.

74. The Chairman resumed the Chair.

75. Mr. SIMMONS (International Indian Treaty Council) said that land had always been the issue central to North American politics and economics. Those who controlled the land controlled the resources it held, and that gave them a wide range of powers. The situation was universal but was especially acute on the American continent, where the apparatus of power relied more heavily than elsewhere on the economy.

76. The Indian reservations of North America constituted a small portion of the total land territory; however, one third of all the low sulphur coal, one fifth of known oil and natural gas reserves, more than one half of the uranium deposits and substantial amounts of other minerals were found on such reservations in the western United States. A comparable if somewhat less pronounced situation prevailed in Canada.

77. The demand for raw materials generated by the nuclear industry and a law handed down from the days of the Indian wars had combined to pose a major threat to one of the world's natural wonders, the Grand Canyon of Colorado. Its deposits of uranium ore, the richest in the entire United States, had provoked a dangerous rush of prospecting. Environmentalists feared irreparable damage to the site itself and, obviously, to wildlife, some species of which were already endangered. There was also a risk that mining activity would result in water pollution that might be hazardous for the only permanent residents of the Grand Canyon, the Havasupai Indians. There had already been uranium mining spills, one in the nearby Navaho reservation, where the United States Department of the Interior had urged residents not to eat cattle that drank from the Puerco River because of radionuclide contamination.

78. Under an anachronistic law of 1872, written when a prospecting operation as often as not consisted of a solitary individual, the mining companies, which today were multinational corporations, had unlimited access to those areas. The most active companies currently operating in the vicinity of the Grand Canyon were a Denver concern that had Swiss affiliations and a San Francisco corporation which was a subsidiary of Cogema, an arm of the French Government.

79. At the present time, the companies were limiting their activities to prospecting, because they were encountering local opposition and a depressed uranium market, but they had discovered deposits that were more than five times as rich as other fields in the United States, making it economical to extract the ore, even in today's market. While most other uranium operations along New Mexico's uranium belt were closing down, prospecting was continuing in the Grand Canyon area, where six mines had already opened barely a dozen miles from the national park's boundaries. The two mining companies were obviously not going to stop there, since they had applied to open mine sites a short distance from the Havasupai reservation and had appealed against the refusal of the authorities.

80. The concerns of the Havasupai had attracted the support of conservationists as well as Native American rights groups. The tribe's only source of water was directly threatened by the proposed mine sites. Worse still, one of its sacred sites would be destroyed. The Havasupai had accordingly filed a suit appealing the approval given for mining, on the grounds that it violated their right to practise their religion and to live according to their ancestral way of life.

81. Native Americans looked at the Earth as a living being, the creator of what some called the environment. Mother Earth and all it had fostered - which constituted human life - were in grave danger today. To destroy the environment was to destroy man's ability to survive and, in the final analysis, to destroy the human being. That principle had been maintained since time began by indigenous peoples, but it was not recognized by colonial Governments, which thereby demonstrated a singular lack of wisdom. But the Earth was defending itself: a process of purification had begun, bringing phenomena such as the changing of the seasons, floods, earthquakes, winds and fires. If man did not heed those signs, human beings would be destroyed: the Earth, however, would survive.

82. In 1855, Chief Sealth of the Duwamish tribe in the State of Washington had written a letter to President Franklin Pierce concerning a proposed purchase of tribal land, in which he said, in essence, that the idea of buying land was alien to Indians. The white man considered the earth to be his enemy and sought to conquer it, to build cities the sight of which pained the red man. If the Chief were to decide to sell the land, it would be on one condition: that the white man treated the Indians as his brothers. The white man believed that his God was different from the God of the Indians and that, in his name, he could own tribal lands. But there was only one God, and harming the earth was the same as heaping contempt upon its creator. The white man's dreams were hidden from the Indians: they would therefore go their own way. If the Chief agreed to sell Indian land, it would be so that the Indians might live out their days on the reservations promised to them. Chief Sealth ended his letter by exhorting the white man to love the earth and to care for it as the Indians had always cared for it; to preserve it with all his strength, all his might and all his heart for the children: both those now living and those still to be born.

83. Mrs. PARKER (Disabled Peoples' International) said her organization was pleased with the progress made towards elaborating a declaration on the rights of the mentally ill. Disabled Peoples' International considered the promulgation of such a declaration to be a highlight of action during the United Nations Decade for Disabled Persons, and hoped that the text would be completed before the forty-seventh session of the Commission on Human Rights.

84. At the Commission's forty-fifth session, her organization had referred to the relationship between the environment and disability. Much of the ecological disaster that occurred was preventable, and scientific and technological advances rendered many ongoing practices that adversely affected human life and health unconscionable.

85. The issue of human rights and the environment encompassed much more than disability, however. Although some environmental issues, especially those related to occupational hazards, fell within the mandate of the Special Rapporteur on human rights and disability, her organization had successfully discouraged the idea of the environment in general being included in his mandate, because environmental degradation gave rise to numerous other human rights issues that called for urgent attention.

86. In conclusion, she strongly urged the Commission to address an issue that had long been avoided, and she welcomed the Sub-Commission's decision to have a report on the subject prepared for its forty-second session.

87. Mr. ZUNIGA REY (International Association of Educators for World Peace) said it was most disturbing to note that breakthroughs in understanding the workings of the human mind were so often used against individuals for political reasons. The use of psychiatry by authorities to muzzle political opponents had been investigated by numerous associations of psychiatrists throughout the world, which had condemned a practice that had nevertheless been common not very long ago in the Soviet Union and various Eastern European countries. Psychiatric methods and psychotropic substances offered torturers numerous advantages over physical violence: they left no marks on the skin, they totally destroyed the individual by demolishing his mental faculties and they created an atmosphere of terror without recourse to beatings, sham trials or lengthy periods of imprisonment.

88. Many countries were still using psychology and psychiatry against political opponents and political prisoners: Viet Nam, North Korea, Iraq and Cuba, for example. With regard to Cuba, he cited a great many cases, of which he had personal intelligence, of victims of psychiatric abuse, and specifically of electric shock technique. That practice, which was becoming more and more widespread under a paranoid régime, was incompatible with the principles and guarantees of human rights protection that Cuba claimed to respect.

STATEMENT MADE BY THE REPRESENTATIVE OF YUGOSLAVIA IN EXERCISE OF THE RIGHT OF REPLY

89. Mr. JAZIC (Yugoslavia), speaking in exercise of the right of reply, said that the representative of the World Association for World Federation had included Yugoslavia among the countries where martial law had been imposed in response to demands for self-determination. He assumed that that representative had been referring to the situation in the autonomous province of Kosovo. He wished to point out, however, that special measures had been introduced by the Presidency of Yugoslavia for the purpose of protecting the constitutional system and preserving peace, order and security for all citizens of Kosovo, regardless of their national origin. A recent account of the situation in Kosovo was to be found in document E/CN.4/1990/82. There had been no case of suppression of the right to self-determination by force in

Yugoslavia, nor could the situation in that country be compared with other cases mentioned by the representative of the World Association for World Federation.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FIRST SESSION (agenda item 19) (E/CN.4/1990/2-E/CN.4/Sub.2/1989/58; E/CN.4/1990/40, 56, 75 and 82; E/CN.4/1990/NGO/6; E/CN.4/Sub.2/1989/26, 36, 37 and 39

90. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing agenda item 19, drew attention to Commission resolution 1989/36 in which, *inter alia*, it requested the Chairman of the Sub-Commission, at its forty-first session, to report to the Commission on the implementation of the guidelines contained in the resolution itself. The report prepared by the Chairman was before the Commission in document E/CN.4/1990/40, and Mr. Yimer, would also address the Commission.

91. At its forty-fifth session, the Commission had adopted resolution 1989/37, in which it had recommended that the Economic and Social Council should request, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I) of 11 December 1946, an advisory opinion from the International Court of Justice on the legal question of the applicability of article 6, section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission.

92. In resolution 1989/75, adopted at its first regular session of 1989, the Economic and Social Council had requested, on a priority basis, such an advisory opinion from the International Court of Justice.

93. On 15 December 1989, the Court had given the following advisory opinion:

"The Court, unanimously, is of the opinion that Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Mr. Dumitru Mazilu as a special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities."

94. Mr. YIMER (Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) said that as the Commission's subsidiary organ, the Sub-Commission acted as its think-tank and set up standards and principles for the Commission. It also played the role of a catalyst in drawing the Commission's attention to particular situations of serious violations of human rights. Recognizing that working groups constituted an invaluable element, particularly in standard-setting activities, the Sub-Commission had decided, at its forty-first session, to establish two additional sessional working groups to deal with the preparation of a revised version of the Draft Declaration on Freedom and Non-Discrimination in Respect of the Right of Everyone to Leave Any Country, including His Own, and to Return to His Country and to produce an overview and analysis of the suggestions and proposals made to enable the Sub-Commission to fulfil its responsibilities in respect of the human rights violations discussed under item 6 of its agenda. In its resolution 1989/34, the Sub-Commission had recommended that the Commission

should authorize the Working Group on Indigenous Populations to meet in 1990 and 1991 for 10 working days in order to enable it to complete a draft universal declaration on indigenous rights.

95. In discharging its mandate, the Sub-Commission had done its utmost to ensure impartiality and efficacy in its work.

96. The agenda for the forty-first session had included 18 items, and at the end of the session, 47 resolutions and 13 decisions had been adopted. In 1989, some members of the Commission had expressed concern about the overburdened agenda, and had suggested lightening it. It should be noted, however, that during its forty-first session, the Sub-Commission had endeavoured to rationalize its consideration of the agenda items before it and to streamline and make its methods of work more efficient and rational.

97. In reviewing the Sub-Commission's task in the area of studies, reports and the activities of its special rapporteurs, account should always be taken of its very nature as a body of independent experts acting in their personal capacity.

98. The study on the right of everyone to leave any country, including his own and to return to his country had been completed and constituted a contribution to the legal doctrine on the subject.

99. With respect to the elimination of religious intolerance, the Sub-Commission had endorsed the view of its Special Rapporteur that the draft Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief should continue to serve as a basis for any further work by the Sub-Commission. It had also recommended that a seminar on the subject should be organized no later than 1991 and that consideration be given to organizing a global consultation on the positions and approaches of different religions and beliefs to human rights and fundamental freedoms.

100. With regard to the right to freedom of opinion and expression, the Sub-Commission had decided to entrust two of its members with the drafting of a study on problems that currently arose in connection with its realization.

101. On the status of the individual and contemporary international law, the Sub-Commission had recommended that the study prepared by its Special Rapporteur be published and given wide dissemination.

102. Concerning the administration of justice, the Sub-Commission would henceforth review the independence of the judiciary under a separate agenda item. Regarding the question of states of emergency, the Sub-Commission had requested the Secretary-General, under the programme of advisory services in the field of human rights, to give consideration to technical assistance which might be furnished by the Special Rapporteur or by the Secretariat to States requesting it. The Working Group on Detention had discussed a draft declaration on enforced or involuntary disappearance.

103. Annex III of the Sub-Commission's report contained a list of studies and reports under preparation and a list of new studies proposed for preparation, subject to approval by the Economic and Social Council. The annex showed that four new studies had been initiated by the Sub-Commission, namely on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights; on the right to freedom of opinion and expression; on the problems and causes of discrimination against HIV infected people or people with AIDS; and on possible ways and means of facilitating the peaceful solution of problems involving minorities. Members of the Sub-Commission had been entrusted with preparing seven new reports and working papers, with no financial implications, to deal with the following subjects: the feasibility of preparing a study on the protection of journalists; the right to a fair trial; the human rights of detained juveniles; the interrelationship between peace and human rights, human rights and the environment, the privatization of prisons; and means of monitoring respect for the independence of the judiciary.

104. By its resolution 1989/45, the Sub-Commission had requested the Special Rapporteur, Mr. Mazilu, to update his report on human rights and youth.

105. With respect to economic, social and cultural rights, the Sub-Commission had endorsed the conclusions contained in the preliminary report prepared by its Special Rapporteur on the topic, and had given due regard to the question of extreme poverty and the relationship between foreign debt and the enjoyment of human rights in developing countries.

106. As in past years, the Sub-Commission had discussed the report of its pre-sessional Working Group on Communications. During its forty-first session, the Sub-Commission had adopted two important procedural decisions on the implementation of Economic and Social Council resolution 1503 (XLVIII), namely, decisions 1989/101 and 1989/102. In the first decision, rule 59 of the rules of procedure of the functional commissions of the Economic and Social Council would be suspended so to allow for voting by secret ballot on the decisions adopted by the Sub-Commission at its forty-first session under Council resolution 1503 (XLVIII). The decision had been adopted after a lengthy debate and had proved extremely controversial. In connection with the procedure provided for under Council resolution 1503 (XLVIII), the Sub-Commission had decided that henceforth, its Working Group on Communications, acting under operative paragraph 1 of that resolution, would not consider a communication unless the Government concerned had had five months for the submission of the reply, counted from the day on which the communication was transmitted to the Government under Council resolution 728 F (XXVIII). The adoption of that decision had also been preceded by a lengthy debate, some members having held the view that the Sub-Commission was not competent to take such a decision. A vote had had to be taken.

107. By its decision 1989/104, the Sub-Commission had decided to establish, at its forty-second session, a sessional working group to prepare an overview and an analysis of the suggestions and proposals that had been made in order to enable the Sub-Commission to better discharge its responsibilities in dealing

with violations of human rights, and to submit to the Sub-Commission its views and recommendations as to the possible advantages and disadvantages of the various suggestions and proposals that had been made.

108. In conclusion, he expressed his gratitude to all participants for their contributions to the Sub-Commission's work.

The summary record of the second part of the meeting appears as document E/CN.4/1990/SR.46/Add.1.



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Forty-sixth session

SUMMARY RECORD OF THE SECOND PART* OF THE 46th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 March 1990, at 7 p.m.

Chairman: Mrs. QUISUMBING (Philippines)
later: Mr. DITCHEV (Bulgaria)

CONTENTS

Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-first session (continued)

* The summary record of the first part of the meeting appears as document E/CN.4/1990/SR.46.

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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FIRST SESSION (agenda item 19) (continued)
(E/CN.4/1990/2-E/CN.4/Sub.2/1989/58; E/CN.4/1990/40, 56, 75 and 82;
E/CN.4/1990/NGO/6; E/CN.4/Sub.2/1989/26, 36, 37 and 39)

1. Mr. STEEL (United Kingdom) emphasized the key position of the Sub-Commission which, by virtue of its independent membership, was uniquely qualified to make a distinctive contribution to the Commission's work. Over the years, the mandate of the Sub-Commission had been interpreted broadly, enabling it to make a powerful contribution to the analytical study of a wide variety of human rights problems and to help in setting standards for the international community. However, as it cast its net ever more widely, and in some instances encompassed issues in which the human rights aspect appeared extremely tenuous, it ran the risk of becoming less effective. He urged the Sub-Commission to avoid the dual temptation to take on too much work and automatically to duplicate the work of the Commission.
2. The report on the Sub-Commission's most recent session showed the valuable contribution made by non-governmental organizations (NGOs), whose comments on country situations and direct experiences had been truly beneficial to the debate. As to the Sub-Commission's work at that session, he commended Mr. Türk for his excellent working paper (E/CN.4/Sub.2/1989/26) on the right to freedom of opinion and expression, a topic which was of great concern to all; he looked forward to the early completion of the final study.
3. The Sub-Commission faced the perennial problem of an overloaded agenda, and its decision 1989/103, whereby it agreed to examine at its next session ways of rationalizing proposals for studies and to consider drawing up a medium-term programme, deserved particular note. It was right for the Sub-Commission to devote time to assessing the priorities for its future work.
4. At its previous session, the Sub-Commission had taken two decisions on procedural points. The decision to suspend article 59 of the rules of procedure of the functional commissions of the Economic and Social Council, in order to allow voting by secret ballot on draft resolutions under item 6, would enhance the independent nature of the Sub-Commission's work and had already been amply vindicated. However, the second procedural decision, to suspend consideration of communications until the Government concerned had had five months to submit a reply, might have serious consequences. Although it was essential for Governments to have enough time to investigate allegations thoroughly, in the vast majority of cases two months should be quite long enough, and extending the deadline was unlikely to change the attitude of those Governments which, to their shame, had chosen to ignore the confidential procedure.
5. In the past year the Sub-Commission had faced a direct challenge to its independence and effectiveness when Mr. Mazilu, the Special Rapporteur on human rights and youth, had been prevented by his Government from delivering his report to the Sub-Commission. The International Court of Justice had delivered its advisory opinion on that matter and confirmed that article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations was applicable to his case, although it had not been asked what privileges and immunities he might enjoy or whether they had been violated. Subsequent developments had fortunately made it unnecessary to pursue that second point. The episode illustrated the need for vigilance against government interference in an expert's work.

6. The question of the independence of the members of the Sub-Commission was highly topical, as the following week the Commission was due to elect or re-elect 13 members to the Sub-Commission. It was an appropriate moment to reflect on the need for the members of the Sub-Commission to be truly expert in the whole field of human rights: they should be learned in its doctrines and literature, be experienced in its administration, be capable of discharging a very heavy workload and, above all, be persons of integrity and independence. As representatives of Governments, the members of the Commission had a duty to ensure that the Sub-Commission was composed of persons who possessed those qualities, and they should be allowed to exercise their skills without interference and without complaint, however uncomfortable the result might occasionally be for Governments. Their overriding duty was to help advance the cause of human rights.

7. Mr. JASIC (Yugoslavia) reiterated his country's support for the efforts of the Sub-Commission to enhance the overall activities of the Commission and referred in particular to the recent initiative of the Sub-Commission in formulating positive measures for the protection and promotion of the rights of national, religious, linguistic and ethnic minorities, to which Yugoslavia attached great importance. The Sub-Commission's initiation and acceptance of the working paper (E/CN.4/Sub.2/1989/43) by Ms. Palley and its decision to study those issues as a separate agenda item had been significant steps forward.

8. Yugoslavia was a multinational, multilingual and multiconfessional federation which guaranteed equality to all its citizens, minorities included, at all levels. He drew attention to some of Yugoslavia's accomplishments and difficulties in resolving the problems of minorities with its neighbouring countries. In its approach to that issue Yugoslavia had always sought to foster mutual co-operation, friendly relations and respect for the territorial integrity of its neighbours; the minorities constituted important bridges for achieving that goal. Yugoslavia had established useful channels of dialogue with Italy concerning the Slovenian minority on the basis of the 1975 Osimo Agreements, and a similar situation existed with regard to the Yugoslav minorities in Austria, as a result of the State Treaty. As far as Hungary was concerned, recent democratic developments offered hope of significant progress; more should be done through legislative and other measures to preserve the national identity of the Yugoslav minorities there. In Romania, too, the process of democratization held out hopes of solving the hitherto serious problems and there was reason to believe that assimilation, denationalization and other forms of pressure were things of the past.

9. In Bulgaria, the rights of the Macedonian minority, which had been recognized and implemented immediately after the Second World War, were no longer acknowledged by the Bulgarian authorities. He expressed the hope that the current democratic Government in Bulgaria would restore the rights formerly enjoyed by that minority.

10. Yugoslavia's relations with Greece, the cradle of democracy, had been marked by a high degree of co-operation which gave reason to hope that the Macedonian minority in that country would be given the possibility to express its identity and enjoy minority rights.

11. Although his delegation had already spoken about the situation of the Yugoslav minorities in Albania under agenda item 12 he reiterated the need for Albania to enable them to enjoy their rights to the full.

12. The issue of the promotion of co-operation in Europe and in the Balkan region, and in particular the protection and promotion of the rights of minorities, illustrated both its complexity and the genuine possibilities for a constructive and useful approach. Conditions seemed increasingly favourable for tackling the problem from a less ideological angle and focusing on broader humanitarian needs.

13. Mr. LINS DE SALVO COIMBRA (Brazil) said that his delegation had taken note with satisfaction of the Sub-Commission's report (E/CN.4/1990/2). The Sub-Commission's work was of paramount importance to the Commission, providing a forum for high-level analysis of new developments in the field of human rights and an institutional framework for studies and reports. For some years now, however, his delegation had stressed the need for greater rationalization of the Sub-Commission's work. As the report showed, the Sub-Commission still duplicated the Commission to some extent. It had, once again, addressed many requests directly to the Secretary-General and to Governments, rather than to the Commission, and many of its resolutions and decisions were too general and unspecific. He was aware that the Sub-Commission had acknowledged those problems and was making efforts to rationalize its agenda.

14. His delegation had had the above considerations in mind when drawing up its remarks on the draft resolutions which the Sub-Commission had transmitted to the Commission for adoption. It supported draft resolution I on human rights monitoring mechanisms, and considered that the proposed international meeting of experts on international monitoring in the field of human rights could lead to more effective co-ordination between the existing human rights monitoring bodies. However, the Commission had been dealing with the same issue under item 18 of its agenda; better co-ordination was required in order to avoid unnecessary duplication of effort.

15. His delegation felt that the issues addressed in draft resolution II on the movement and dumping of toxic and dangerous products and waste could be better dealt with in other multilateral forums and that the draft resolution could, accordingly, be improved. His country attached great importance to standard-setting, fact-finding and institution-building, and therefore supported draft resolutions III, IV and VI-IX.

16. His delegation fully supported draft resolution V on assistance to Paraguay, which had a long tradition of friendship and co-operation with his country. It also supported draft resolutions X and XI and draft decision 3 on the rights of indigenous populations. The Brazilian Constitution, adopted in 1988, recognized the rights of indigenous peoples to enjoy their own social organization, practices, language, religious beliefs and traditions; they were also granted land rights in perpetuity. His delegation welcomed the proposed further studies on a universal declaration of indigenous rights. It had attended the meetings of the Sub-Commission's Working Group on Indigenous Populations as an observer, and wished to congratulate the Working Group on its patient and constructive efforts.

17. His delegation had some doubts about draft resolution XII on the sale of children. Further studies should be undertaken to assess the effect of the recently adopted Convention on the Rights of the Child before a special rapporteur was appointed to investigate the issue. However, he supported draft resolution XIII on the draft programme of action for prevention of sale of children, child prostitution and child pornography, which would enable the

Sub-Commission to gain a better picture of the issues involved. It also supported draft resolution XIV, draft decisions 1, 2 and 4, Sub-Commission resolutions 1989/19, 1989/23 and 1989/45 and Sub-Commission decisions 1989/101, 1989/102, 1989/105, 1989/107, 1989/111 and 1989/112. He preferred not to comment on Sub-Commission resolutions 1989/3, 1989/5-8 and 1989/10, which were to be dealt with under item 12, but he did consider that the Sub-Commission should not address Governments directly.

18. For the first time in the Sub-Commission's history, there were two Brazilian candidates for membership, which testified to the importance attached to human rights in the new democratic Brazilian society.

19. Mr. SPAHIU (Liberation) said that his organization welcomed Sub-Commission resolution 1989/7 (E/CN.4/1990/2, p. 25) expressing concern about the situation in East Timor. Under agenda item 12, many members of the Commission, observers and NGOs had drawn attention to the further deterioration in the human rights situation since that resolution had been adopted. Indeed, those who tried to conceal the facts about conditions in East Timor had themselves admitted in their own statement under item 12 that the Commission had been given "a gloomy picture" of human rights in Indonesia, particularly on East Timor, and had suggested that torture, detention without trial and disappearances did not "necessarily" exist in East Timor. That was the closest the authorities in control in East Timor had ever come to admitting that those abuses did in fact occur. It was pointless to assert that many more tourists had visited East Timor in 1989 than in the previous year, since 1989 was the first year when any tourists had been allowed in. The Indonesian authorities still refused to allow human rights organizations to visit East Timor to investigate conditions there; brief visits by foreign dignitaries or journalists were no substitute. The Commission should urge the Indonesian authorities to allow fact-finding missions to visit the territory.

20. The Sub-Commission's draft decision 4 dealt with the preparation of a study on national experience in the protection of minorities. In that connection, he wished to draw attention to the situation in the Yugoslav province of Kosovo, which had considerably deteriorated since the constitutional changes in 1989. The Albanians of Kosovo, who made up 40 per cent of the Albanian nation and were the third largest ethnic group in Yugoslavia, had enjoyed equal rights with other groups only between 1974 and 1981. Under the constitutional changes of 1972 and 1974, the province had become a constitutive element of the Yugoslav federation and a component part of the Republic of Serbia, and no decisions relating to the rights of nationalities and minorities could be adopted by the Republican Assembly without the approval of the provincial assemblies of Kosovo and Vojvodina. In March 1989, the Republic of Serbia had been unified, and its autonomy had been abolished. The Albanian population's demands for greater freedom had resulted in numerous clashes with the police, the most recent having left 35 people dead.

21. Since 1981, the State had discriminated against Albanians on the pretext of combating counter-revolution and separatism. Between 1981 and 1988, more than 500,000 Albanians - almost one third of the Albanian population in Kosovo - had been arrested by the police at one time or another. Albanians accounted for over 90 per cent of all political prisoners in Yugoslavia. They had been denied the right to freedom of assembly, the right freely to elect representatives to State and party organs, and a say in educational planning

and schooling, art, culture, economic affairs and urban planning. Under the state of emergency, now almost a year old, members of the security forces had entered private homes and attacked women, children and elderly people.

22. His organization called for an open and democratic dialogue between all the parties in Kosovo in order to reach a solution acceptable to all. It urged the Commission to request the Secretary-General to appoint an independent person of standing to act as mediator in the search for peaceful solutions to difficult and explosive situations such as that in Kosovo.

23. Ms. SMITH (International Organization for the Elimination of All Forms of Racial Discrimination), speaking on behalf of the Four Directions Council as well as her own organization, said that the Navajo Indians, of whom she was one, and the Hopi Indians were closely associated; both had religions based on the clan system with very strong ties to their ancestral homeland. The Navajo-Hopi Land Settlement Act, enacted by the United States Congress in 1974, had forced relocation on the Navajo. As a result, 3,000 of them had been relocated, 2,500 were currently refugees, 3,500 were still resisting displacement, and related psychological problems were common among them. Relocation was being forced on the Navajo despite United States claims that it was voluntary; the foundations of their religion were consequently being strained but attempts to seek help through application of the American Indian Religious Freedom Act had been ruled out of order by the courts. Relocation was a gross violation of human rights and an example of discrimination against an indigenous people. Unfortunately, further forced evictions were likely in the future, to allow an expansion of mining activity.

24. The tribal councils were unable to help because they were controlled by the United States Government, and so she had come before the Commission as a last resort. Sub-Commission resolution 1989/37 calling for the suspension of involuntary relocation and the direct involvement of the Navajo and Hopi in the process of negotiating a settlement of the dispute had been completely ignored and further action on relocation had been taken. The Navajo and Hopi were among the internally displaced peoples referred to by the Office of the United Nations High Commissioner for Refugees in its appeal to the Commission on the subject. She appealed to the Commission to urge the United States to comply with Sub-Commission resolution 1989/37 and to keep that resolution on its agenda for further study. She further appealed for an 18-month moratorium on all relocation activities pending the search for a humane solution to the problem. It appeared that there were plans to export coal mined from Hopi and Navajo land to Japan; her organization appealed to Japan not to accept that coal.

25. Ms. TOM (Caritas Internationalis), referring to the Sub-Commission's draft resolution VI on discrimination against HIV-infected people and people with AIDS, said that national organizations within Caritas had made great efforts in recent years to dispel fear of, and prejudice against, AIDS, to mobilize sufficient resources for medical and support services in developing countries, and to develop a holistic approach to AIDS services by encouraging the sponsorship of programmes which integrated pastoral care with health and social services. In that context she wished to stress what Pope John Paul II had recently stated, namely that AIDS had many more profound repercussions of a moral, social, juridical and structural nature than other infectious diseases, not only on individual families and communities, but also on nations

and on the entire community of peoples. One hundred and seventy-seven countries or territories were already affected by the immunodeficiency virus, which was expected to spread still further.

26. The children of HIV-infected mothers were among the victims of AIDS. Such children, especially those living in extreme poverty and excluded from society, were particularly vulnerable to abandonment. The provisions of the Convention on the Rights of the Child, whose speedy entry into force her organization looked forward to, should be invoked in such cases, so that the children concerned might be treated and given an adequate standard of living.

27. The right to medical care and necessary social services had been recognized, inter alia, in the Universal Declaration of Human Rights. However, thousands of persons suffering from AIDS, especially in developing countries, were deprived of palliative measures because of the inflated costs of the relevant technologies and medication. The world community needed to find a means to balance the financial interests of private corporations in the medical field with the right of all infected persons to timely and appropriate care. In certain countries, anyone receiving a blood transfusion ran the risk of HIV infection. Fears had been expressed by the Archbishop of New York that in the future, in view of the large numbers involved and the prohibitive cost of care, only a selected number of AIDS patients would be treated.

28. Special attention was called to the unethical discriminatory measures taken against HIV-infected people or people with AIDS. Many social problems arose from involuntary HIV-testing and from the resultant unfair exclusions and discrimination. International co-operation and information in the field of social services and development were essential in view of the deep impact of the HIV-AIDS pandemic on the social fabric and infrastructure of society. Caritas Internationalis was deeply committed to collaboration with WHO through its important Global Programme on AIDS. It urged the Commission to adopt draft resolution VI without a vote, and hoped that the Economic and Social Council would authorize a study of problems and causes of discrimination against HIV-infected people or people with AIDS, to be undertaken by Mr. Varela Quirós.

29. Ms. SCHREIBER (International Abolitionist Federation), referring to the study on ways and means for establishing an effective mechanism for the implementation of the Slavery Conventions (E/CN.4/Sub.2/1989/37), said it had been noted in the Sub-Commission that those Conventions did not contain adequate provision for their implementation or monitoring and required little information from States. She doubted whether the Working Group on Slavery, despite the fact that its mandate could encompass the consideration of reports, would be able to persuade States to reply accurately and in detail to any questionnaires submitted to them. For effective results, an expert committee should be set up, with terms of reference similar to those of the newly-established Committee on Economic, Social and Cultural Rights, for the purpose of examining reports submitted by States parties to the Conventions. That would require the preparation of additional protocols to the Conventions. A further recommendation endorsed by the Federation was that the United Nations and its specialized agencies should convene an expert meeting to consider international standards and the application of conventions on subjects including suppression of the traffic in persons and of the exploitation of the prostitution of others. The Federation also endorsed the proposal that

a special rapporteur be appointed to report annually on the situation relating to the sale of children, child prostitution and child pornography, and the possible preparation of a model law to combat such abuses.

30. In her statement to the Working Group on Slavery, the Norwegian Minister for Justice had noted that the Council of Europe was giving special attention to international co-operation against the sexual exploitation of children, and had recommended that emphasis should be placed on information, prevention and assistance measures. Action should also be taken against those who exploited, or were likely to exploit, children and those who made profits from such exploitation.

31. The Federation considered that child pornography and pornographic tourism should be treated as serious offences, and that international co-operation should ensure that those responsible for such activities were prevented by law from seeking refuge in other countries. The law should make, not the acts of children, but those of their customers and exploiters a criminal offence. Measures should be taken to provide for the confiscation of profits from the sexual exploitation of children.

32. The Federation had always considered child welfare to be one of its major concerns. It had been a member of the informal group of NGOs taking part in the preparation of the Convention on the Rights of the Child which had been adopted by the General Assembly in November 1989. It had been particularly concerned with article 34, relating to measures to protect children from sexual exploitation, including prostitution and pornography. The Federation applauded the fact that the King of the Belgians had devoted his entire Christmas message to his people to the Convention on the Rights of the Child, which Belgium would shortly ratify.

33. The Federation would be holding its thirty-first international congress in Geneva in September 1990 on the subject of the child as the principal victim of the exploitation of prostitution and violation of human rights.

34. Ms. TOLEDO (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that the most serious human rights problem affecting the Americas and other regions was that of disappeared detainees, of which there were roughly 90,000 cases in Latin America. It was a form of repression which violated the rights to liberty, security of person, due process and life, and also inflicted on the relatives of such detainees the uncertainty of not knowing the fate of their loved ones. However, such disappearances had only become prevalent in Latin America in recent decades and had not been a feature of colonization or the struggle for independence.

35. While characteristics varied from one country to another, there were features common to all cases of disappeared detainees. First, the practice was justified on the grounds of the doctrine of national security and low-intensity conflict, which decreed that the "enemy within" must be overcome at all costs. The second common feature was the involvement of the State apparatus. It was agents of the State who chose the victims and carried out the arrests, and it was the State which, by neglecting its duties, left the victims totally unprotected and accepted official reports as true. The State as a whole was involved at every stage of the process, seeking as it did to conceal crimes and thereby leaving them unpunished. Various pretexts were used for not investigating cases: one was the passing of time; another,

as far as newly-restored democracies were concerned, was that impunity laws were important in order to avoid provoking the military and thus to ensure the stability and security of the new democracy. Of course, such laws were unethical and should be declared null and void, particularly since pardoning the crimes in question did not contribute to national unity or help rebuild the moral fabric of society. Enforced disappearances and illegal executions were crimes against humanity, and therefore imprescriptible and unpardonable. Reconciliation could be achieved and society rebuilt not on the basis of crime and terror, but through truth and justice. The truth about the fate of disappeared detainees was vital, so that people would never again have to suffer the uncertainty of not knowing what had happened to their loved ones. It was equally important that crime should never be allowed to prevail over citizens' demands for justice. If criminals were allowed to go unpunished, there was nothing to prevent them from repeating their actions.

36. In order to prevent and condemn such crimes, her organization had submitted a draft convention to the United Nations. The first step, however, should be a declaration and a legal instrument condemning them. Although the Sub-Commission had worked on a draft declaration in August 1989, there had been no consensus on the definition of that particular form of repression. However, the Commission on Human Rights of the Organization of American States had approved a declaration on the basis of a proposal by the International Commission of Jurists. Her organization believed that it was vital to agree on a definition which would make that category of crimes an internationally-punishable act and a crime against humanity. It was particularly important that it should not be classed as a political crime and that action on the orders of a superior during an actual or imagined war should not be used as an excuse. Lastly, the declaration should contain specific provisions facilitating international co-operation in preventing and punishing such crimes.

37. Ms. FARHI (International Council of Jewish Women), speaking on behalf of Zonta International, the International Council of Jewish Women, the World Federation of Methodist Women, Defence for Children International, the International Child Catholic Bureau, the Bahá'í International Community, the International Movement ATD - Fourth World, the International Abolitionist Federation, the Arab Lawyers' Union, the Arab Organization for Human Rights, the World Association of Girl Guides and Girl Scouts, Liberation, Human Rights Advocates, the Union for Progressive Judaism, the International Movement for Fraternal Union Among Races and Peoples, the World Zionist Organization, the International Association of Penal Law, Christian Democratic International, the International Fellowship for Reconciliation, the International League for the Rights and Liberation of Peoples, the International Federation of Women Lawyers, the Medical Women's International Association, the International Association for Religious Freedom, the World Jewish Congress, the Co-ordinating Board of Jewish Organizations, the International Organization for the Elimination of All Forms of Racial Discrimination, the International Alliance of Women and the International Commission of Jurists, as well as her own organization, urged the Commission to endorse the appointment of Mr. Varela Quiros, in accordance with Sub-Commission resolution 1989/17, to undertake a study of problems and causes of discrimination against HIV-infected people and AIDS sufferers.

38. In that connection, she wished to draw the attention of the Commission to the problem faced by children whose parents had died from the illness and

who, although not infected by the virus, were themselves the victims of AIDS. Although the extended family system prevalent in some developing countries was normally capable of responding to individual cases of orphaned children, it was becoming severely strained and, given the weak or almost non-existent social welfare system in most of those countries, such orphans had no protection and were deprived of their most fundamental rights.

39. The report by the Commission on the Status of Women (E/CN.6/1989/6/Add.1) had pointed out that the problem was particularly acute in urban areas, where the number of AIDS cases was greatest and the traditional extended family ties might no longer exist. Orphaned children would be particularly exposed to the dangers of drug abuse and prostitution. In an effort to protect children from those risks, some members of local communities were reportedly caring for up to 20 or even 30 such orphaned children in their own homes without any extra resources. The prohibitive cost of sending children to school meant that the children would grow up to be predominantly illiterate and therefore particularly vulnerable. In addition, the lack of information on the ways in which the illness was transmitted led to discrimination against such children and thereby increased their suffering. Even uninfected children would run the risk of stigmatization and rejection and might be forced to leave school by the authorities.

40. In the light of the gravity of the problem indicated by the information now being supplied through WHO, UNICEF and other organizations, it was imperative that Governments should start to act before ever-increasing numbers of children were needlessly victimized. In that connection, WHO had proposed a programme to help States take the necessary action and avoid taking inefficient or counter-productive steps. However, it was important that help should be provided to and through communities, in order to respect the child's environment and practices. Such help should take the form of money, food and medical supplies, and the creation of information and educational structures. In most developing countries, sending orphaned children to orphanages would be damaging in many ways.

41. On behalf of the aforementioned NGOs, she appealed to the international community and all Governments to address the problem without delay and to make a commitment to implement effective measures that would combine health and social concerns with respect for the individual rights of the children concerned.

42. Ms. GAER (International League for Human Rights) drew attention to two important procedural decisions taken at the forty-first session of the Sub-Commission: first, the decision to allow voting by secret ballot on cases of gross violations; and secondly, the establishment of a five-month period before communications received under Council resolution 1503 (XLVIII) could be considered. Those decisions raised a number of questions regarding the overall work of the Sub-Commission. One such question was the extent to which the Sub-Commission carried out its work independently. As an expert body responsible for drawing the Commission's attention to patterns of gross violations of human rights, it must be independent. The Sub-Commission had begun a debate on that issue and one proposal, by Mr. van Boven and Mr. Eide, had been that it should explore alternative means of examining country violations. Far-reaching proposals to readjust the balance between the confidential consideration of gross violations and the public examination of such matters had been made by Mr. Chernichenko and Mr. Treat. One proposal

was that, instead of adopting resolutions on country cases, the Sub-Commission should consider preparing a single report addressing a wider range of such cases. There was also the question whether cases should be examined only in confidential sessions. The key to those questions lay in the conditions which would enable members to act most independently and objectively.

43. Sub-Commission decisions 1989/101 and 1989/105, which suspended rule 59 of the rules of procedure and permitted voting by secret ballot on questions involving gross violations, had, in her opinion, given the experts a measure of independence which had enhanced their objectivity *vis-à-vis* such violations. That was evident from the resolutions adopted on China and East Timor. While the decision on the secret ballot was a welcome temporary attempt to address the issue of independence, it did not address the broader question where the Sub-Commission should be heading in the future. In that connection, it was important that the Sub-Commission should not duplicate the work of the Commission, unless or until substantially more resources were available in the human rights programme.

44. As a result of the decision on the five-month lead-time before confidential consideration of cases of gross violations, it would take a full year before matters were brought to the Commission's attention. That would prevent the United Nations from taking action to aid individual victims of human rights violations, which was, after all, the fundamental purpose of the Sub-Commission. As other speakers had commented, the five-month lead-time did not seem necessary for those countries prepared to co-operate and was unlikely to encourage those which had shown themselves unwilling to co-operate. Furthermore, it would seriously undermine the ability of the Sub-Commission to respond rapidly to serious violations.

45. A further important issue which she wished to raise was the place of women's human rights within the so-called "mainstream" of human rights activities within the United Nations. Placing "women's rights" activities in Vienna, as opposed to Geneva where other "human rights" activities were centred, had had many unfortunate consequences. The Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women were marginalized within the United Nations system, and their work went largely unnoticed within overall human rights activity. While it was true that women's rights were on the agenda of the Sub-Commission, women's perspectives were given relatively little attention when formulating and implementing many standards. Unproductive duplication between the various bodies in Geneva and Vienna could be avoided by moving those bodies that dealt with women's rights issues to Geneva. That was unlikely to happen, however, and so her organization suggested that the Commission should request the Sub-Commission to undertake a study of the implications of the present conceptual and institutional separation of human rights and women's rights, and recommend appropriate action.

46. Ms. BRUCE (International Catholic Child Bureau), speaking on behalf of the Bahá'í International Community, Caritas Internationalis, Defence for Children International, the International Abolitionist Federation, the International Association of Penal Law, the International Commission of Jurists, the International Council of Jewish Women, the International Federation "Terre des Hommes", the International Fellowship of Reconciliation, the International Movement ATD - Fourth World, the International Save the Children Alliance, the International Social Service, Pax Romana, the World

Association for the School as an Instrument of Peace and World Federation of Methodist Women, as well as her own organization, drew attention to the results of the Sub-Commission's Working Group on Contemporary Forms of Slavery, which had shown that, although trade in human beings was forbidden all over the world, children were being increasingly bought and sold into various forms of slavery. The Working Group had mentioned eight purposes for which children were being sold: adoption, child prostitution, child pornography, child labour, crime, begging, organ transplants and bride-selling. A particularly obnoxious form of child exploitation was linked to modern forms of tourism, which in some countries had contributed to an increase in the incidence of the sale of children for prostitution. In view of the AIDS pandemic, it was even more urgent that the issue should be addressed and, in that connection, WHO had begun a series of consultations on HIV epidemiology and prostitution.

47. The United Nations had dealt with the problems of the sale of children and sexual exploitation in the past. In 1982, in the concluding remarks on his study of the exploitation of child labour, Mr. Boudhiba had pointed out that there were at least three cases when the exploitation of child labour was no less than a flagrant violation of the principles of the Charter and the Universal Declaration of Human Rights. Those cases were, firstly, sale and similar practices; secondly, child prostitution, trafficking in pornography involving the sexuality of children, and the international traffic in children; and lastly, under-age maidservants in a position of servitude. Those areas should be a priority target for concerted action and increased pressure on States condoning such practices, since it was not a matter of restricting practices but of bringing an end to them. A report to the Economic and Social Council in 1983 on the traffic in persons and exploitation of prostitution, by Mr. Fernand-Laurent, had made several references to the plight of children and stated that the sale of children should be treated by the United Nations in a specific way. In addition, a 1986 resolution of the Commission had mentioned the need to encourage national policies in those fields and recommended that particular attention should be given to child prostitution. It was now being recognized that a high degree of political will was needed to tackle the problems effectively. Sub-Commission draft resolutions XII and XIII currently before the Commission were accordingly very important.

48. Her organization supported the call for a special rapporteur who would not only consider the extent, frequency, causes and ramifications of such forms of slavery, but would also, in particular, try to identify the people or groups in whose interest it was to enslave children in those ways, give special consideration to beliefs, attitudes and practices which served to place and maintain children in slavery, and propose new and creative ways of addressing those problems in the future. At the same time, it was important not to forget the international programme of action on those issues referred to in draft resolution XIII. The programme incorporated former resolutions of the Commission which had not been adequately implemented and, in the opinion of her organization, the proposed special rapporteur should, in the course of his study, promote and adapt the programme. Similarly, the World Campaign on Human Rights and the advisory services programme should examine what contribution they could make to its implementation.

49. By appointing a special rapporteur, the Commission would make a major contribution to the fight to save the world's children from exploitation, while at the same time proving to all who worked to free those children that the international community had not forgotten them.

50. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education) said that he wished to refer to the Sub-Commission's draft resolution IV, which related to the working paper prepared by Mr. Türk, Special Rapporteur of the Sub-Commission, on the right to freedom of opinion and expression (E/CN.4/Sub.2/1989/26). That right could not be fully enjoyed unless the right to education was also respected. Without freedom of education - the freedom to educate a child in accordance with one's own convictions, freedom of opinion and expression would be confined within limits imposed by the State. Philosophers throughout the ages had pointed to the dangers of a State monopoly on education; anti-democratic régimes invariably denied educational pluralism, seeing education as an instrument of political propaganda designed to create a new type of human being.

51. It was possible to judge the sincerity of a State's commitment to freedom of opinion and expression by assessing its attitude to freedom of education. The State must deliberately relax its control over education; that was the price of freedom. His organization considered that the absence of freedom of education constituted a serious limitation of freedom of expression and should figure among the limitations which may jeopardize the right to freedom of opinion and expression listed by Mr. Türk in chapter I (4) of his working paper.

52. While few democratic States denied the right to education altogether, his organization was concerned about the number of countries which advocated a State monopoly on education. Such an approach betokened a view of the world which was incompatible with democracy and the development of multicultural and pluralist systems of education. Pluralism should be respected and encouraged, and not merely tolerated.

53. His organization considered that the proposed study on the right to freedom of opinion and expression should pay more attention to freedom of education, particularly the right of parents to choose schools other than those established by the public authorities, and to ensure the education of their children in conformity with their own convictions, and the right to establish and direct educational institutions, as laid down in the International Covenant on Economic, Social and Cultural Rights.

The meeting rose at 9 p.m.



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Forty-sixth session

SUMMARY RECORD OF THE 47th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 2 March 1990, at 10 a.m.

Chairman: Mrs. QUISUMBING (Philippines)

CONTENTS

Statement by H.E. the Minister for Foreign Affairs of Guatemala

Report of the Sub-Commission on Prevention of Discrimination and Protection of
Minorities on its forty-first session (*continued*)

Human rights and scientific and technological developments (*continued*)

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The meeting was called to order at 10.25 a.m.

STATEMENT BY H.E. THE MINISTER FOR FOREIGN AFFAIRS OF GUATEMALA

1. Mr. RIVERA IRIAS (Minister for Foreign Affairs of Guatemala), noting that the positive changes taking place in various parts of the world were transforming international relations, said it was clear that the struggle for the full enjoyment of human rights had decisively contributed to generating those changes and would help to consolidate a new international order in which peace would be the fruit of understanding and mutual respect and not of force or terror. Understanding required the recognition of needs and difficulties as well as the necessary support to resolve them. Peace should be consolidated where it had been achieved through greater understanding and more comprehension.
2. Central America had participated in that new spirit of change seeking peaceful co-existence through dialogue, strengthening of democratic processes and the concerted will to achieve through regional integration the economic and social development that would make it possible to improve the living conditions of the majority of the people in each Central American country. To that end, it was necessary to stimulate greater understanding and more comprehension by the international community.
3. The United Nations had supported Central America in that effort. The Secretary-General had followed with great interest the development of the process of regional pacification since the time of its promotion by the Latin American countries members of the Contadora Group and the recent subregional initiative put forward by the Central American Presidents, which had resulted in the historic Esquipulas II agreements and subsequent commitments. Pursuant to a Security Council decision, the United Nations was currently monitoring the fulfilment of the security commitments under the Esquipulas II agreements. In addition, the United Nations High Commissioner for Refugees was facilitating the repatriation and resettlement of Central Americans who had been displaced or fled armed conflicts, while UNDP was actively promoting an economic co-operation programme for Central America.
4. He had referred to all those important activities of the United Nations in support of peace and development in Central America so that the members of the Commission would adopt a constructive attitude, based on objective rather than partial, political or ideological criteria, that would help the Central American countries to overcome the differences still existing in their societies and to improve the institutions and mechanisms which guaranteed the protection and full enjoyment of human rights and fundamental freedoms.
5. The Commission's analysis of the situation in Guatemala appeared to be made from both standpoints: objective reality and political interests. Unfortunately, the two diagnoses did not coincide and, consequently, neither did the criteria as to which mechanisms were most appropriate for the case of Guatemala. His Government, which had been co-operating with the Commission for several years and knew which mechanisms or procedures were best suited for its situation, had requested the provision of advisory services. It hoped that it would be supported constructively by all concerned in its efforts to consolidate a democratic society within a favourable regional context and to develop and refine a legal system that ensured the protection, promotion and enjoyment of civil, political, economic, social and cultural rights.

6. The Commission was the appropriate body in which to request the understanding and support of the international community for the fulfilment of President Cerezo's popular mandate which was not solely to restore a State subject to the rule of law, strengthen political and democratic institutions, and promote internal and regional peace but also to complete within a climate of freedom, the slow and difficult process of eliminating through political harmony and agreement the polarization of Guatemalan society.
7. The right to life, liberty and security of person could not be duly ensured without the existence within State institutions of just and effective mechanisms and of the human element necessary to implement them. For centuries, there had been a tradition in Guatemala of autocracy, dictatorship and a régime in which justice and its administration had been conceived and directed as a marginal priority and its independence from the Executive Power had been limited by political interests.
8. As the Expert had stated in his oral introduction and in his report (E/CN.4/1990/45/Add.1, para. 31), the system was also confronted with the old inquisitorial theory in criminal trials, which had never been changed or reformed to adopt it to modern times when scientific methods and co-operation by citizens ensured the individual's legal guarantees to have a fair trial, a basic component of the modern system of legality. The training of honest and conscientious judges and investigators was also essential for the administration of justice.
9. His Government had unreservedly co-operated with the Commission and accepted a recommendation that had been made by various advisors; it was undertaking the most ambitious structural and functional reform of criminal justice in Guatemala, namely the reform of the Code of Criminal Procedure.
10. As the Expert said, there was a positive element in that all sectors of the Guatemalan people were beginning to be aware of the human rights programme and therefore international assistance for the teaching of human rights and for the creation of that awareness should be stressed and important co-operation and assistance projects increased.
11. Another institution which had become more dynamic was the office of the Procurator for Human Rights whose primary function was the protection of fundamental rights. That office would be able to increase its capacity to produce results if it benefited from advisory services, since the purpose of the legislation which had created it was to break the vicious circle of violence.
12. As a result of the recommendations of the advisory services, his Government had signed and ratified international conventions and instruments for the protection of human rights. In that way, it was creating the framework and conditions for a favourable scenario for the consolidation of democracy and respect for human rights.
13. His Government had adopted a completely open approach to the evaluation of the domestic situation and the eradication of factors that were not conducive to the protection of human rights. All State institutions had co-operated fully with the Expert and the Government had spared no efforts or resources to help him to carry out his duties. It was of crucial importance therefore that an attempt should be made to maintain that spirit of co-operation.

14. He called on the Commission to evaluate the positive achievements of the past few years, and the importance of continuing to promote respect for human rights in his country. He also stressed the need for more and stronger private citizen groups genuinely concerned with human rights.
15. It could not be denied that the establishment of a democratic system and a legitimate Government in Guatemala constituted a qualitative change in the right direction despite the destabilizing action of extremist right-wing groups which, seeing their control over the development of society seeping away, were trying by violent means to return to a past which the majority of Guatemalans had clearly rejected. There had been a positive change despite the destructive actions of left-wing extremists who had not yet understood that the road to power did not involve destroying the system but rather working within it, i.e. choosing ballots rather than bullets.
16. The democracy that was being consolidated in Guatemala should be situated within its context and understood in the light of its efforts and results on the basis of concrete facts rather than on that of partial standpoints which were rooted in the past or in a theoretical or hypothetical future.
17. What could be stated and confirmed was that the advances which the Guatemalans currently enjoyed were the result of their political institutions and the actions of the Government. Their rights and freedoms were not only theoretical but were being exercised in their daily lives. The Guatemalan people had demonstrated that results could be obtained through dialogue. They had learned to exercise their right to disagree and to express it publicly without fear, as was shown by the intense, political and social activities of political parties, people's organizations and trade union associations. The results of public demonstrations and strikes had strengthened the confidence of citizens in democratic institutions.
18. The dialogue had been consolidated through reconciliation bodies in which more and more sectors were taking part, being convinced that dialogue was the only feasible way of making progress. The Government had demonstrated political democracy in practice and had never resorted to the use of force to resolve the political and social conflicts it had had to face over the past four years.
19. President Cerezo had promoted that faith and confidence in democracy and dialogue not only at the national level but, with a view to protecting his people from the tragedy of the fratricidal war that was developing in the Central American region, had taken the initiative of dialogue and the political approach to deal with the Central American problem. The invaluable positive results of the Esquipulas agreements were known to all. Peace had been consolidated and the effectiveness of dialogue had been demonstrated. The Central Americans could turn their thoughts and energies to construction and development.
20. The historic rendezvous which the people of Guatemala had in November 1990 would, he was sure, confirm the positive developments taking place in his country.

21. With objectivity and a constructive approach, the Expert had drawn attention to the real facts of the human rights situation in Guatemala, stating that the question should continue to be examined by the Commission. In that connection, he referred to paragraph 70 of the Expert's report (E/CN.4/1990/45), which emphasized the need for pluralistic and representative democracy. The Expert had also stated that international assistance and co-operation were essential if the process of safeguarding human rights was to continue, through the application of the provisions of the international instruments ratified by Guatemala and through the promotion of human rights (para. 69).

22. The content and orientation of the report were clear. The Commission should act accordingly and support a democratic government which was trying to improve the quality of society. The reality of Guatemala in 1990 was not the same as at the beginning of the 1980s. Changes for the better had taken place and the sectors which had contributed to those changes should continue to enjoy the support of the Commission and of the international community.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FIRST SESSION (agenda item 19) (continued)
(E/CN.4/1990/2 - E/CN.4/Sub.2/1989/58, E/CN.4/1990/40, 56, 75 and 82;
E/CN.4/1990/NGO/6; E/CN.4/Sub.2/1989/26, 36, 37 and 39)

23. Mr. EXA-NCHAMA (International Movement for Fraternal Union Among Races and Peoples) said that, in Sub-Commission resolution 1989/3, the Spanish version of paragraph 15 should be brought into line with the English and French versions.

24. Sub-Commission resolution 1989/14 on freedom of opinion and expression, which was anchored in the Universal Declaration of Human Rights, concerned one of the most often-violated rights. Freedom of opinion was the very foundation of democratic government. It was strange that while supporting the return to democracy in Latin America and Eastern Europe, Western Europe sought to prevent the return to freedom when the African peoples attempted to follow suit.

25. Africans did not understand how the French could treat Chinese students as heroes while ignoring the massacre of students that had taken place in Africa a few days previously. They also wondered how the former Prime Minister of France, Jacques Chirac, could preach the one-party system in Africa while combating that system in Eastern Europe and Latin America. It was a form of racism to assert that one type of political system was for the whites and another for the blacks.

26. His organization supported Sub-Commission resolution 1989/12 on the movement and dumping of toxic and dangerous products and wastes and called upon the international community to urge the "civilized Europeans" to discontinue sending toxic wastes to Africa.

27. The Commission should approve the recommendations contained in Sub-Commission resolution 1989/16, on traditional practices affecting the health of women and children, because such recommendations would have a real impact.

28. His organization supported Sub-Commission resolution 1989/30 on the protection of staff members of the United Nations system. It was necessary to assist Ms. Bautista to complete her report. He urged Governments that had imprisoned staff members of international organizations to release them forthwith; if such persons had committed offences, the Secretary-General should be informed thereof so that the necessary measures could be taken in accordance with the United Nations Charter.

29. He welcomed Sub-Commission resolution 1989/34 on the draft universal declaration on indigenous rights. It was high time that the human rights of those peoples were protected.

30. The international community was duty-bound to support Sub-Commission resolution 1989/42 on the sale of children. International solidarity could prevent the occurrence of such practices which were a disgrace to the human race.

31. Mr. BARSH (Four Directions Council) said that the Working Group on Indigenous Populations continued to attract a growing number of indigenous peoples' organizations from around the world. Work on the draft universal declaration on indigenous rights had reached a critical stage. There was broad agreement on many parts, and important disagreements remained on just a few principles. With a constructive and flexible attitude on the part of the participants, a final draft could conceivably be ready for review by the Sub-Commission and the Commission in 1992.

32. It had been widely felt by persons observing the Working Group's meetings that indigenous peoples should be involved more directly in the drafting of the universal declaration and that the commitment of Governments to the final text should be ensured. Such involvement could be promoted on an informal basis by convening small drafting groups to make recommendations to the Working Group itself. In that way, it might be possible for Government and indigenous organizations to arrive at some general agreements upon which the Working Group could then build a sound final document.

33. The aim of the draft decision to authorize an additional five working days for the Working Group's 1990 and 1991 sessions was to provide enough time for consultations with governmental and indigenous observers. In view of the continued growth in attendance at the meetings of the Working Group, there was no other way of giving priority to completion of the declaration.

34. The recent adoption by the International Labour Organisation (ILO) of the Convention concerning Indigenous and Tribal Peoples in Independent Countries, No. 169 lent enhanced significance to the drafting work. Convention No. 169 established a basis for further standard-setting in the field. But the new Convention should be paired with an instrument indicating the direction to be taken when Governments were able to exceed the Convention's requirements. Moreover, it was essential to promote respect for the rights of indigenous peoples in the work of the United Nations itself, and that would require a declaration by the General Assembly.

35. The Four Directions Council attached great importance to the proposed International Year for Indigenous Rights (Sub-Commission draft resolution XI). The world's estimated 200 million indigenous people were coming increasingly under threat from large-scale projects, environmental degradation and the economic and political convulsions in the countries in which they lived. The proposed international year was an opportunity to strengthen the effectiveness of United Nations activities in the field by encouraging all United Nations bodies to review the impact of their activities on indigenous peoples and to develop explicit policies and guidelines for respecting indigenous peoples' rights; linking all related United Nations activities, whether in human rights, economic and social development or the environment, with a view to mobilizing the greatest possible support for national-level projects for indigenous peoples; and, above all, increasing the direct participation of indigenous peoples' organizations in the work of the United Nations at all levels.

36. In connection with Sub-Commission draft resolution X, his organization supported the proposal by the Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States that a United Nations technical conference be held on practical experience in the realization of sustainable and environmentally sound self-development by indigenous peoples.

37. That idea had become even more timely in view of the approval by the forty-fourth session of the General Assembly of plans for a United Nations Conference on Environment and Development in June 1992. A technical meeting on indigenous development could make an important contribution to the preparations for that Conference.

38. Draft resolution X would also authorize wider contacts between many United Nations technical assistance programmes and the indigenous peoples' organizations. Support for development initiatives taken by indigenous peoples themselves would have a greater concrete impact on their enjoyment of human rights than more intensive criticism of Governments, and draft resolution X would permit some modest experimentation along those lines.

39. ILO had adopted a similar policy in 1989 and had begun to entertain project proposals from indigenous organizations. Draft resolution X would facilitate co-operation on such projects between the Centre for Human Rights and ILO and would attract more contributions to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, including contributions from the indigenous peoples' organizations themselves.

40. His organization, and other similar ones, had been disappointed at the repeated delays in the Special Rapporteur's study on treaties and agreements between indigenous peoples and Governments, and he urged the Special Rapporteur and the Secretariat to act swiftly, so that a substantive progress report would be ready for discussion at the Working Group in the summer of 1990.

41. Ms. SLESZYNSKA (Christian Democratic International) stressed the importance of Sub-Commission resolution 1989/45 regarding human rights and youth. In the third world, millions of young people were forced to earn their living for their families from a very early age. That prevented them from obtaining the education needed to break out from the vicious circle of

exploitation and misery to which they were condemned in a society dominated by the pursuit of profit. Often they fell prey to organized crime, drug trafficking or prostitution. The situation affected not only the countries of South-East Asia or the major Latin American urban centres, but also certain quarters of wealthy cities in the industrialized countries.

42. Young people were also victims of war. That was particularly visible in the countries of Central America, where adolescents of 13 or 14 years of age were often conscripted by force, both by the Governments and by insurgent groups. Similar situations had also been observed in conflicts in the Middle East. Her organization disagreed with the age limit of 15 for recruitment to military service set by the Convention on the Rights of the Child. Allowing children under the age of 18 to participate in armed conflict violated the spirit of that Convention.

43. The Christian Democrat International applauded with deep admiration the vanguard role of the young people of Beijing, Bucharest and Berlin in the valiant struggle for democracy.

44. In August 1989, more than 10,000 young people from around the world had gathered in the French capital to take part in "Paris 89", one of the patrons of which had been the Secretary-General. That meeting had demonstrated that co-operation and concrete projects could promote peace and human rights, and the Commission should give consideration to the fruitful and promising initiatives that had emerged from that event.

45. Ms. ANDUJAR (Indian Law Resource Center) said she wished to alert the Commission to the critical situation of the Yanomami people of Brazil. The Yanomamis were an indigenous people that lived for the most part in the region of Roraima, where the recent gold rush had had a disastrous impact on their health and social structure. A new Constitution in Brazil guaranteed the protection of the human rights of indigenous peoples, but its provisions were not being implemented. A state of lawlessness reigned in Roraima, and the leading cause of death was murder.

46. With the arrival of vast numbers of gold diggers, the Yanomami people had been exposed to a variety of diseases, above all malaria, which an estimated 80 per cent of the Yanomami population living close to the mining sites had contracted. If the Government of Brazil took the appropriate measures, the illness would not be fatal, but as matters stood, 15 per cent of the Yanomami population had died of malaria in the past two years, and if no action was taken, the entire people would die out within 10 years.

47. The Government of Brazil was aware that international attention was focusing on the fate of the Yanomami Indians, and it should allow representatives of the Commission to visit the area to investigate the situation.

48. Mr. LOS ARCOS (Spain) said his delegation regretted that, in spite of numerous calls for the Sub-Commission to adhere to its terms of reference, the Sub-Commission continued to discuss issues of a mainly political nature, in many cases reflecting the particular attitudes of the countries of origin of its members, thus not only wasting time and resources but preventing the objective, independent approach which was supposed to be the Sub-Commission's characteristic.

49. It was essential that the Sub-Commission members and their alternates should satisfy the criteria of experience and independence, be present at the Sub-Commission's sessions at Geneva and take an active part in the discussions and decisions. It was quite wrong for an elected expert to be replaced, at such sessions, by someone from his country's mission. Unless the experts were able to discharge their tasks free from any influence by their own States, the Sub-Commission's credibility would be fundamentally threatened. In addition, the important contribution the Sub-Commission could make to the Commission's work was vitiated if it continued to address proposals direct to the Secretary-General, Governments, or specialized agencies without the Commission's authorization.

50. Since the preparation of studies, reports and draft international instruments was one of the experts' major contributions, the Sub-Commission should always be guided by the relevant Council and Commission resolutions. It had taken the welcome step of adopting decision 1989/104 on the establishment of a sessional working group to prepare an analysis of the suggestions and proposals which had been made, especially by the Commission, to enable it to carry out its mandate more effectively. That working group should consider, as a matter of priority, ways of avoiding a proliferation of studies which lacked majority support or particular interest, and to ending the adoption of resolutions and decisions of a political nature for which other forums were more appropriate.

51. Experts' reports should reach the Secretariat in time to be translated and issued before the Sub-Commission's sessions began; and no studies should be prolonged, or new ones initiated, without authorization from the competent body and consideration of the financial implications. In addition, the temptation to leave it to the Centre for Human Rights to complete the work on studies already begun should be avoided.

52. In so saying, his delegation had no wish to inhibit the Sub-Commission's sphere of action; indeed, the Sub-Commission and its independent experts, a forum which non-governmental organizations could approach, had an essential role. But that role was to promote and contribute, not to repeat and duplicate.

53. Mr. ABRAM (United States of America) said that when he had himself been a member of the Sub-Commission, almost three decades previously, he had been impressed not only by the members' expert qualifications and rigorous approach but also by their independence. Few of them had been government employees, and several of them had been adversaries of their own Governments on civil rights and other matters. That independence fostered frankness, objectivity and even-handedness.

54. The situation had woefully changed. The Sub-Commission currently had its own agenda and its own projects. Its independence had been eroded by members who served simultaneously as their governments' representatives on the Commission or in the General Assembly. The Commission had most recently seen a blatant example, concerning one current member of the Sub-Commission, of the resultant ease with which a Government could exert influence in the Sub-Commission.

55. Its reputation as a body of experts had been undermined by the slipshod pursuit of duplicative, wasteful or politicized projects. Work that should be performed by its members was often passed on to highly-paid consultants or to the Secretariat. The time spent in debating political issues which were properly for other forums further eroded the Sub-Commission's credibility.

56. On the other hand, there could be no doubts about what a genuine expert study could ultimately accomplish. In particular, he recalled the study prepared in the Sub-Commission, during the early days of his membership, by Mr. Inglés of the Philippines, on the right to leave one's own country and return to it; he had been reminded of that at a recent meeting of the Conference on Security and Co-operation in Europe, during which the Hungarian delegation had asked to join those of Austria and the United States in sponsoring an initiative calling for the elimination of all forms of exit visas. The recent great changes in Eastern Europe, symbolized by the pulling down of the Berlin Wall, and other advances in the cause of human rights, had undoubtedly been influenced by such studies. A further example was the study on the human rights of individuals who were not nationals of the country in which they lived, which had resulted in a declaration on the topic.

57. There was a pressing need for the Sub-Commission to study the next great and dangerous challenge to human rights: the return of the ghostly rivalries; the ethnic, religious and national tensions that until recently had been suppressed by the forces of empire, Fascism and totalitarianism. The lid had been opened on age-old tensions. Azerbaijanis and Armenians; Albanians and Serbs; Bulgarians and Turks. A clearer understanding of how those tensions could be reduced was long overdue.

58. In that connection, he wondered how Switzerland - a country with four languages and several religions - had managed to keep the peace for so long. The question could also be asked how his own country - with over 130 different nationalities and ethnic groups - existed with endurable ethnic tension. Those questions required answers if members were to comprehend and cope with the next great assault upon fundamental human rights. The Sub-Commission should be instructed to do its utmost to complete its work on that topic.

59. Reminding the Sub-Commission of its original mandate was the first step towards recovering its value. However, much more was necessary. An end should be put to the use of outside consultants to do the work of the members; the Commission should require the Sub-Commission to adopt a more thorough and professional approach to the drafting and reviewing of its own projects. It should demand that the Sub-Commission's members be independent and impartial; if they were not, it should demand their resignation. The Sub-Commission should be extracted from the political thicket by being instructed to stop trying to function like a miniature Human Rights Commission. There was no need for it to consider and adopt resolutions on human rights abuses around the world, a topic which constituted item 12 of the Commission's own agenda.

60. He stressed the need to send crystal-clear instructions to the Sub-Commission, which had been allowed to stray from its original purpose. Only the Commission could change that. It should not let that resource lie fallow or be misused for political ends. If members expected the Sub-Commission to live up to its potential and mandate, then they must be

prepared to assist it. To that end, the Commission must accept its responsibilities to the Sub-Commission, namely to instruct it, to guide it, and to change it back into the great institution it had once been and could be again.

61. Mr. KOLOSOV (Union of Soviet Socialist Republics) said that the change in international relations from confrontation to co-operation was reflected in the discussions and decisions of the Sub-Commission, although the course was not always smooth; the new way of thinking placed demands even on that body's eminent experts. Unfortunately, it could not always be said that the Sub-Commission's approach to questions of human rights had been free from ideological considerations; at times that forum gave the impression that each expert was listening only to his own statement. Although human rights problems might have a close ideological link, it was not only possible but essential for the experts' work to remain aloof from it - and the Commission itself could help to that end.

62. The Sub-Commission's basic role was to provide the Commission with expert analyses to enhance the quality of its work. Sub-Commission reports were of major value; in that regard, a parallel could be drawn between the Sub-Commission and the International Law Commission. But over the years the Sub-Commission's debates had become increasingly politicized; one result was that the Commission, at its current session, was required to consider 16 draft resolutions and decisions, out of some 60 texts adopted by the Sub-Commission.

63. If the Commission failed to give its subsidiary body adequate guidance, the outcome was duplication rather than complementary effort. The lead in selecting themes for study should come from the Commission; that did not deny the Sub-Commission a say in what particular studies might be pursued, but the Commission's ratification should precede any action.

64. The Sub-Commission, rather than considering situations in particular countries, should be concentrating on thematic studies, in which its members' expertise could be put to the most effective use with less risk of political influence, and on generating ideas, based on consensus, for the development of new international standards and the strengthening of existing ones. It could help particularly in developing overall approaches to questions of human rights violations, analysing opinions and considering ways and means of responding to situations which called for urgent attention.

65. With regard to human rights violations in various parts of the world, the Sub-Commission could adhere to its status as a body of experts, within the terms of its mandate pursuant to Council resolution 1503 (XLVIII). The experts' opinions could be reflected in brief statements, and if it was felt necessary to draw the Commission's attention to a matter, the corresponding statements could be referred to in the relevant thematic resolutions.

66. The work on reports and studies was not evenly distributed among the Sub-Commission's membership. Although a rigid rule was impossible, an effort should be made to involve each expert in the task of rapporteur.

67. The problems which beset the Sub-Commission should not be allowed to hide the fact that it was achieving ever better results in studying topics such as the rights of indigenous peoples and various aspects of the administration of justice, and in contributing to the development of monitoring mechanisms and the implementation of international standards. It could be expected to achieve even more if measures were taken to improve its effectiveness.

68. Mr. ZHIN Yishan (China) said that his Government had always attached great importance to the work of the Sub-Commission and taken an active part in the deliberation of relevant questions. The Sub-Commission had achieved some commendable results but there was still room for improvement in its work.

69. He was happy to note that the Sub-Commission had adopted a number of resolutions on the right to self-determination for the peoples of southern Africa and Palestine, in which it condemned the human rights violations by the South African racist régime and the Israeli authorities and expressed firm support for the just struggle being waged by those peoples.

70. His delegation had also noted the decision by the Sub-Commission to consider on an annual basis, beginning at its next session, the question of the realization of economic, social and cultural rights.

71. His delegation also commended the Sub-Commission on its studies on issues relating to the protection of the rights of women, children and indigenous people and on its adoption of a series of resolutions thereon.

72. On the other hand, there were some problems which merited the Commission's attention. Over the past few years, there had been a tendency in the Sub-Commission that a member who made accusations against countries by name was regarded as a staunch "human rights defender". At the Sub-Commission's most recent session, an expert had mentioned 70 to 80 countries in her statement; in her draft resolution submitted to the Sub-Commission, 39 countries had been accused by name and divided into country groups. Such practice was not only at variance with the mandate of the Sub-Commission but was also incompatible with the independent status of experts. Under the relevant United Nations resolutions, the main purposes of establishing the Sub-Commission was to set up an institution of experts so that it might bring into full play the expertise of its members by carrying out appropriate and useful studies and submitting advisory opinions to its parent body, the Commission on Human Rights. The fact that one was an expert did not mean that he was entitled to accuse or even attack a sovereign State.

73. The merits and shortcomings as well as the practical results of the long-standing system of special rapporteurs deserved careful study and evaluation. As things stood, the Sub-Commission was conducting too many studies, some of them overlapping with those of other organs, a situation which would not only result in the waste of human and material resources but also hinder the effectiveness of the Sub-Commission.

74. To take an example, he recalled that the Commission had established an open-ended Working Group to draft a declaration on the protection of the rights of minorities. The Group had been doing useful work for a number of years and a number of clauses of the declaration had been worked out on a preliminary basis. During its meetings, some of the major problems facing

minorities had been fully explored. Nevertheless, the Sub-Commission had, at its forty-first session, adopted a decision requesting the appointment of a special rapporteur to study the protection of the rights of minorities. Such an exercise was clearly repetitious.

75. Some of the studies and reports prepared by experts of the Sub-Commission failed to receive prompt consideration. Other reports, though considered, were not fully discussed and were adopted hastily. As a result, the report or study was unable to benefit from the expertise of the other members of the Sub-Commission and reflected only the personal views and comments of the rapporteur. Furthermore, only a few of the rapporteurs appointed to date were from developing countries. That unfair situation should be redressed.

76. His delegation welcomed the decision by the Sub-Commission to review its previous reports and studies and to work out a medium-term plan on the reports and studies to be prepared in the future. It hoped to see the documents prepared on that issue at an early date and expected that the Sub-Commission would give full play to its strong points and overcome its shortcomings in an effort to improve its efficiency.

77. The Sub-Commission should act strictly in accordance with the instructions of its higher bodies and observe its own rules of procedure. When examining certain matters at its forty-first session, the Sub-Commission had suspended certain rules, which had resulted in the abnormal practice of adopting resolutions concerning the questions of racism and apartheid by secret ballot. That was a harmful practice and should not be allowed to continue.

78. His delegation wished to point out that, at the forty-first session, a few Western members of the Sub-Commission had levelled unfounded attacks against China. Through manipulation and instigation, they had imposed their will on the Sub-Commission by changing the normal voting procedure and as a result a resolution had been adopted on the "Situation in China", which constituted a serious interference in his country's internal affairs.

79. On 2 September 1989, the spokesman of the Chinese Foreign Ministry had issued a statement solemnly declaring that the resolution was illegitimate and null and void and that the Chinese Government flatly rejected it. The Permanent Representative of China to the United Nations had recently sent a letter to the Secretary-General reiterating the position of the Chinese Government in respect of that resolution and giving the reasons for its rejection of the resolution. The letter had been issued as an official document of the current session of the Commission. The Sub-Commission should adopt effective measures to prevent a small number of persons from using it for their own political ends.

80. Ms. ANDREYCHUK (Canada) said that the Sub-Commission on the Prevention of Discrimination and Protection of Minorities continued to play an important role in promoting and protecting human rights through a wide range of activities. Increasingly, however, concern had been expressed over the changing nature of the Sub-Commission and the potential threat of those changes to the expert, independent, character of the institution. Her delegation shared some of those concerns. In its opinion, the Commission

should continue to examine the Sub-Commission's activities, fostering and enhancing those that were currently done well and recommending practical solutions for those areas where problems hampered the overall effectiveness of the Sub-Commission.

81. The guidelines for the work of the Sub-Commission, reiterated in the resolutions adopted by the Commission at its past two sessions, were primarily aimed at improving the effective functioning of that body and must continue to define the parameters within which it was expected to perform.

82. The current report of the Chairman of the Sub-Commission (E/CN.4/1990/40) bore witness to the desire to develop strategies for improving the effectiveness of that body. The establishment of a sessional working group to develop ideas on the means by which the Sub-Commission could better address situations of human rights abuses was a positive step in that regard. Her delegation continued to believe that, while the Sub-Commission's consideration of country situations was important, the proliferation of resolutions on different countries was not the necessary end result. It would encourage the sessional working group to consider seriously the suggestion that those resolutions might be replaced by a report of the deliberations of members on violations around the world.

83. Although some progress had been made, the Chairman's report (E/CN.4/1990/40) and the report of the Sub-Commission as a whole (E/CN.4/Sub.2/1989/58-E/CN.4/1990/2) showed that much remained to be done. In view of the limited resources of the United Nations, it was essential that the work done by one body did not duplicate that of another. Moreover, ongoing work should be completed before new proposals for studies and reports were authorized. The initiation of new studies remained one of the most important activities of the Sub-Commission and should continue, provided that the proposals had clearly defined objectives and addressed innovative subjects.

84. She welcomed the proposal for a study by Mr. Joinet and Mr. Türk which would examine the problems affecting the realization not only of the right to freedom of opinion and expression, but also of the related rights of freedom of thought, assembly and association and the right to take part in government. Another example of innovation on the part of the Sub-Commission was the proposed study by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights. The question of the responsibilities of the State and the international community towards such victims was an area of human rights which had received little attention, and the proposed study should go a long way towards filling that gap.

85. In the past, too many studies and reports had taken too long to complete or had never been completed. In view of the unprecedented number of proposals for reports and working papers which had been put forward at the current session, and the burden which that placed on the Centre for Human Rights, she emphasized that the production of such reports remained largely the responsibility of the Sub-Commission member, whose expertise had been the basis for his or her election.

86. The report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1989/36) continued to be of prime interest to her delegation. She congratulated the Working Group on its presentation of the first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples.

87. At its previous session, the Commission had appointed a Special Rapporteur to study treaties, agreements and other arrangements between States and indigenous populations. Since then, her country had received a visit from the Special Rapporteur, who had met a Canadian indigenous group. Her delegation looked forward to the Special Rapporteur's preliminary report in 1990.

88. With regard to the efforts by some extremist groups to disrupt the market for furs, thus depriving indigenous peoples of one of their traditional means of livelihood, she drew attention to paragraph 18 of the draft Declaration. Her Government would continue to work with its indigenous populations and the fur industry to protect the right of indigenous peoples to their traditional means of subsistence.

89. Her delegation noted with satisfaction the work of the United Nations Voluntary Fund for Indigenous Populations and hoped that support for the Fund would continue to grow.

90. She continued to believe that the procedure established by the Economic and Social Council under its resolution 1503 (XLVIII) was one of the most important mechanisms for protecting human rights within the United Nations system. For individuals in States which had not accepted the other individual complaint mechanisms, it was often the only hope of obtaining some form of redress.

91. Although the procedure did not work as effectively as it might, it should be strengthened rather than weakened. That had been the intention, although not the result, of the Sub-Commission's decision to extend the time given to States to respond to communications. However, the extension of the minimum period to five months was excessive, in view of the often urgent appeals made to the international community under the procedure. She therefore appealed to the Sub-Commission to reconsider its decision.

92. In the forthcoming elections of members of the Sub-Commission, her delegation would again support the candidates who best embodied the characteristics of independence and a strong expertise in and devotion to the cause of human rights.

93. Mr. BENHIMA (Morocco) said he welcomed the favourable outcome of the case of Mr. Mazilu, Special Rapporteur of the Sub-Commission, and was confident that, Mr. Mazilu having regained his liberty, he would be able to carry out his mandate in accordance with Sub-Commission resolution 1989/45.

94. The report of the Sub-Commission (E/CN.4/Sub.2/1989/58-E/CN.4/1990/2) underscored the importance and scope of its activities. The Sub-Commission's complementary role in relation to the work of the Commission deserved to be strengthened. The independent experts could obviously make an important contribution to clarifying the debates on human rights issues dealt with by the Commission.

95. Among the various questions considered by the Sub-Commission at its most recent session, he had noted with interest the growing importance accorded to the protection of vulnerable groups, especially children. He drew attention to Sub-Commission resolutions 1989/14, 16, 17, 42 and 43, which encompassed a range of issues affecting children in almost all parts of the world, and urged the Sub-Commission to continue discussing and analysing those questions.

96. He also welcomed the adoption of Sub-Commission resolution 1989/44, which was a positive contribution to the peaceful and constructive solution of problems involving minorities.

97. His delegation appreciated the efforts made by the Sub-Commission to rationalize and streamline its work. In the absence of a comprehensive evaluation of all the human rights monitoring mechanisms, it would be risky to take hasty decisions which might have difficult consequences for both the Commission and the Sub-Commission.

98. As noted in annex III of the report of the Sub-Commission, there was a growing and welcome tendency to prepare studies, reports and working papers with no financial implications. He also welcomed the Sub-Commission's decision to consider the possibility of drawing up a medium-term programme of studies.

99. The Sub-Commission's effectiveness would be seriously threatened without the co-operation of the Centre for Human Rights, whose staffing and resources should be increased in view of the increasingly complex tasks it was required to undertake.

100. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that his delegation endorsed the positive appraisal of the Sub-Commission's work during its forty-first session. Its deliberations, as reflected in its balanced and well-thought-out decisions, seemed to have been virtually free from the former confrontations; it was satisfying to note that, out of 60 resolutions and decisions, a mere 14 had been adopted by a vote.

101. At the same time, there remained a certain politicization, which hampered an objective and analytical approach, as could be seen in the adoption of resolutions on country situations. That had led to the complaint that in some respects the Sub-Commission was duplicating the Commission's work.

102. The Sub-Commission must eschew the adoption of resolutions on country situations. Its decision-taking must conform to the mandate set forth in Council resolution 1503 (XLVIII), even in cases where it was following Commission instructions to look into matters which involved situations in certain countries or territories. A clear distinction had to be made, of course, between the confidential and public procedures; and the experts were entitled, at all times, to express their views on human rights in any country within the framework of the Sub-Commission's terms of reference.

103. The Sub-Commission, given its expert nature, was fully qualified to draft resolutions on particular themes; it could also continue its work on developing criteria for the appraisal of situations and contribute to the development of review procedures. He hoped that such matters would be borne in mind by the sessional working group to be established pursuant to Sub-Commission decision 1989/104.

104. An overhaul of the Sub-Commission's procedures could lead to a reduction in the number of resolutions and decisions adopted - 60 was too many to emerge from a four-week session involving 26 experts - as well as fewer studies, especially of the sort which would have no direct practical impact on the observance of human rights. And the task of preparing reports and studies should be more evenly spread among the Sub-Commission's experts.

105. The Commission, in its resolution 1989/36, had called upon the Sub-Commission to provide it with recommendations based on the different views and perspectives of independent experts, which should be appropriately reflected in the Sub-Commission's report as well as in the expert studies. In that respect, Sub-Commission resolution 1989/27, which envisaged the appointment of two experts, from the United States and the Soviet Union, to study and report on standards relating to the right to a fair trial, was an example of a practical approach which deserved approval and support from all quarters.

106. The Sub-Commission had also adopted a welcome fresh approach to the issue of human rights and scientific and technological developments, as reflected in its resolution 1989/12 on the movement and dumping of toxic and dangerous products and wastes, and in decision 1989/108 on human rights and the environment. His delegation had already spoken, under agenda item 14, about that initiative, which the Commission should support, and was sponsoring a resolution which was being drafted with wide support.

107. Miss BOZHKOVA (Bulgaria), speaking in exercise of the right of reply, regretted that the representative of Yugoslavia had stated that the current democratic Government in her country should recognize an alleged Macedonian minority in Bulgaria. That statement had evoked certain dark periods in the history of the two neighbouring countries, when attempts had been made, through the old authoritarian practices, to create a Macedonian national consciousness artificially and to impose it not only on the population of Pirin Macedonia, which was in Bulgaria, but also on the population of Vardar Macedonia, which was in Yugoslavia.

108. In the context of the sweeping and irreversible democratic changes taking place in her country, it had rejected once and for all the system of authoritarianism and condemned the mistakes that had been committed during that deplorable historical period. Accordingly, her delegation had serious difficulty in understanding what the representative of Yugoslavia wanted her Government to do, surely not to revert to policies and practices that had already been rejected.

109. It was a mistake to identify the name of the geographical region of Pirin Macedonia with certain ethnic and national minorities. There were no historical or legal grounds which could justify the Yugoslav claims regarding the existence of an alleged Macedonian minority in Bulgaria. Everyone familiar with the history of the Balkans was aware of that fact.

110. Moreover, a national consensus existed on that question among all the political parties in her country. The recent declaration of the Yugoslav Parliament alleging the existence of a Macedonian minority had been rejected by the Minister for Foreign Affairs of Bulgaria, the Communist Party, the Agrarian Party, the main opposition alliance and all the other political parties, organizations and associations. Most importantly, the population of Pirin Macedonia itself rejected the Yugoslav claims and had unequivocally declared its Bulgarian origin at a series of demonstrations held to protest the adoption of the declaration in question.

111. Under the new democratic conditions in her country every Bulgarian citizen was fully entitled to declare freely his or her ethnic, religious or social affiliation. However, that choice should be left to the Bulgarians themselves. The new democratic policy on the national question, including

foreign policy, was based solely on the will of the Bulgarian people. Accordingly, any expectations on Yugoslavia's part of forcing concessions from Bulgaria with regard to the so-called Macedonian minority were unrealistic.

112. She reaffirmed Bulgaria's readiness to take an active part in development and in strengthening co-operation and good-neighbourly relations with all the countries in the region, including Yugoslavia. However, she urged the Government of Yugoslavia to refrain from reopening old enmities which had been characteristic of the Balkan region in the past and had brought much suffering to its peoples. Bulgaria was open to scrutiny and ready to discuss any criticism, including criticism in the human rights field, but it would not accept attempts to impose on its citizens an artificial ethnic consciousness.

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 14)
(continued) (E/CN.4/1990/29, 30, 31, 53 and Add.1-4 and 72; E/CN.4/1990/NGO/29)

113. Mr. BOUTET (France) said that the item under discussion was the best illustration of the way in which basic human rights were constantly being extended into new areas. The search for the best possible adaptation of existing law to scientific and technological developments had proved to be increasingly complex. The solutions proposed with a view to protecting individual freedoms, while based on the principles of the Universal Declaration of Human Rights and the International Covenants on Human Rights, must take into account scientific developments and their impact on societies, and must themselves undergo development. Two areas to which the Commission should accord priority were the new information and communication technologies and medicine and biotechnology.

114. Automatic data collection and processing raised the sensitive issue of respect for privacy and individual freedom. While a single file might be harmless, several interconnected files could hold out the constant threat of abuse. For that reason, suitable laws had been enacted in a number of countries.

115. For its part, France had adopted an act in 1978 setting out the framework for the use of personal data files and establishing the National Commission on Data Processing and Freedoms. The Commission, which was independent of the Executive, had control over all personal data files. All individuals were entitled to access to information which concerned them and to correct such information where necessary. In addition, the act prevented any use of personal data files which was contrary to human rights, for example, by prohibiting - without the express agreement of the person concerned - the storage of data which revealed the racial origins, political, philosophical or religious opinions, or trade-union affiliations of individuals.

116. The States members of the Council of Europe had drawn up a European convention regulating the use of personal data files with a view to protecting individual rights.

117. International co-operation, whether bilateral or multilateral, should play a major role in developing such regulations. The United Nations had taken the lead in that regard by drawing up guidelines for the regulation of computerized personal data files, as outlined in the report submitted by the Special Rapporteur (E/CN.4/1990/72). He hoped that, before the end of 1990, the Economic and Social Council and the General Assembly would finally adopt those guidelines.

118. In the realm of the life sciences, particularly medicine and biotechnology, the question arose as to whether morality and positive law were adequate to ensure the proper use of technology involving experimentation on the human body, or whether new rules were called for. The unprecedented acceleration of knowledge and technology applied to the life sciences required each individual, and society as a whole, to assume responsibility for the preservation of human rights. The law in and of itself could not solve everything, especially in such a rapidly changing field.

119. There was a public debate in France concerning sensitive issues such as research on embryos, organ transplants and genetic experiments. Although the debate was far from over, some legislation had already been adopted, such as the 1988 act relating to the protection of persons who were the subjects of biomedical research.

120. His Government took the view that what was basically at stake in all public action must still be the protection of human rights as embodied in the existing national and international legal instruments. Accordingly, the Commission should take an active part in the ongoing debate, in consultation with non-governmental organizations and eminent experts. In so doing, it should be guided by the conviction that there could be no scientific and technological development in any field which did not increase the rights and enhance the dignity of the individual.

The meeting rose at 1.05 p.m.